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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 147.

M. M. WHEELER, N. N. BORAH, A. WINTERS, WILLIAM R. COX, ET AL., APPELLANTS,

vs.

J. C. CLOYD, ELIZABETH H. TAYLOR, LUCINDA A. WALKER, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 11, 1886.

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1 *Placita.*

Pleas in the circuit court of the United States of America within and for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and the Hon. H. W. Blodgett, judge of the district court of the United States for the northern district of Illinois (designated and appointed by the circuit judge to aid in holding a circuit court in said southern district of Illinois, by virtue of section five hundred and ninety-six of the Revised Statutes of the United States, for the purpose of hearing the cause hereinafter named), on Monday, the 25th day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

J. A. JONES, *Clerk.*

2 JAMES C. CLOYD
vs.
SAMUEL MUNDY, WILLIAM SANDLIN, HENRY F. Garrison, Samuel Garrison, Joseph White, William White, and Martha J. Wheeler, Heirs of Richard White, Deceased; James B. Manahan, William F. Bain, William Shaeffer, E. T. Hall, Elizabeth E. Slover, F. M. Burgess, Adam Osterman, Wm. J. Osterman, and Samuel Sparks. } 6306. In Chancery.

CHAUNCEY T. AUSTIN
vs.
MICHAEL BOOK, WILLIAM MORRIS, and DANIEL L. MCCAULEY. } 6307. In Chancery.

JOHN B. CONNEL
vs.
THOMAS J. PETTYJOHN, JACOB C. WILLIAMS, Richard Wilson, James W. Hilliard, Edward Baird, Samuel Sparks, James F. Cline, James McCleary, George Warren, Susan Pharr, William H. Dobbs, Andrew Martin, Ansel K. Atterberry, Asa F. Atterbury, Howland Tompkins, John Keen, Jr., George C. Garrod, N. N. Borah, and Preston R. King. } 6308. In Chancery.

3 ELIZABETH H. TAYLOR, HENRY M. Alexander, Surviving Executor of Peter MacMartin, Deceased; William L. Ralston, Joseph Wotelbaum, Charles A. Coe, J. Sargent Smith, and Arthur F. Gould

vs.

CALEB PEDDICORD, MICAJAH DALTON, JOHN Bain, Elizabeth Smoke, A. Winters, Hiram Tucker, T. F. Bain, J. W. Atkinson, William Garrison, L. J. Rider, Stephen J. Renfro, Welcome Compton, Andrew Bleakley, Sarah St. Leger, William St. Leger, Harrison St. Leger, John E. St. Leger, and Emma St. Leger, Heirs-at-Law of Thomas St. Leger, Deceased; Michael Book, J. W. Hilliard, William Shaeffer, D. L. McCauley, Lavinia Sumpter, and J. Skelton. — 6309. In Chancery.

FERNANDO B. HANE

vs.

JOHN C. BESTOW, EDWARD BONHAM, CHARLES A. Beecher, George Johnson, Conrad Karn, Malinda Saunders, Ætna Life Insurance Co., James R. Bain, B. Stevens, John
4 R. Murphy, Lewis J. Rider, Alexis Rider, W. M. McReynolds, James A. Boyd, Robley D. Adams, Jane Ridgeway, Allen Cope, Wm. Robertson, Valentine C. Borah, Wm. N. Borah, Maria Harlan, George F. Pykert, James K. Parmer, Thomas Behmyer, Wm. White, Wm. Smith, Van R. Price, Richard Campbell, Andrew Wall, Sterling M. Hill, F. W. Tracey, Samuel A. Skinner, Wilkenson Brock, John L. Waggoner, John Haffle, Thos. J. Clarke, James Stroman, John R. Odell, James M. Kelley, John Stanley, John Johnson, Gilbert J. George, Wm. Carson, Oliver P. Murphy, Wm. Rhode, J. C. Weaver, Wm. M. Branson, John W. Anderson, A. W. Bruce, Martin M. Wheeler, Geo. W. Draper, Wm. Mabry, Susan Pharr, John Harper, Marshall Pool, J. Huntzinger, George W. Odell, Milton Cravens, John Funkhouser, R. H. Prickett, H. Kincart, James Martin, Robert T. Forth, Sarah Bane, and Wm. H. Grant. — Intervening Petition.

5 LUCINDA A. WALKER
vs.
H. TOMPKINS, ROBERT P. HANNA, GEORGE Warren, Sarah A. St. Leger, S. A. Skinner, Hiram Tucker, Henry T. Garrison, E. S. Hall, D. L. McCauley, and J. R. Bain. } Intervening Petition.

[On the margin :] Consolidated.

SOUTHERN DISTRICT OF ILLINOIS, *ss :*

The complainant in the first of the foregoing-entitled causes as consolidated, James C. Cloyd, a citizen of the State of New York, brings his bill, by E. Beecher, Esq., his solicitor, against Clarissa Jordan, J. Giles, Samuel Mundy, William Sandlin, Sarah E. Morris, Henry T. Garrison, Samuel Garrison, heirs of Rich'd White, dec'd; James B. Manahan, Thos. F. Bain, William Shaeffer, E. T. Hall, Nathan Moon, John Pykert, Lewis Crissell, Elizabeth E. Slover, F. M. Burgess, unknown heirs of J. J. R. Turney, Adam Osterman, Wm. J. Osterman, Welcome Pennington, and Thomas Ayers, all citizens of the State of Illinois, and William H. Grant, a citi-
6 zen of the State of Colorado; W. J. Ford, a citizen of the State of Ohio; Samuel Sparks and F. M. Atterberry, citizens of the State of Illinois, defendants in said bill.

The complainants in the second cause, Chauncey T. Austin, who is a citizen of the State of New York, brings his bill, by E. Beecher, Esq., his solicitor, against Michael Book, John Smith, William Morris, T. H. B. Stroman, and Daniel L. McCauley, all citizens of the State of Illinois, defendants in said bill.

7 The complainant in the third of said causes, John B. Cornell, who is a citizen of the State of New York, brings his bill, by E. Beecher, Esq., his solicitor, against Thomas J. Pettyjohn, unknown heirs of Wiley Henderson, dece'd, Jacob C. Williams, Richard Wilson, Samuel McGammon, Willis W. Speer, James W. Hilliard, Nicholas Kepper, Edward Baird, Beeson Davis, Samuel Sparks, James F. Cline, James McCleary, Otho W. Hooper, Jane Sessions, George Warner, Joseph Boland, Hiram Jones, Susan Pharr, William H. Dobbs, Jacob Pursley, Andrew Martin, William Pursley, Ansel K. Atterbury, Asa F. Atterbury, John M. Reed, Howland Tompkins, John Keen, Jr., Francis M. Atterbury, Joshua Cook, George C. Garrod, Richard Sanders, John Payne, N. N. Borah, J. E. McCormick, Richard E. Jenkins, L. D. Leach, John Smith, Thos. S. Walker, Joseph Copelin, George Gambrel, Daniel L. McCauley, M. J. Dickinson, T. H. B. Stroman, Robert P. Hardy, Edward Bonham, Joseph Hutchinson, James Stroman, James B. Smith, J. S. King, Preston A. King, George F. Smith, William M. Branson, and George Warner, all citizens of the State of Illinois, and C. M. Wake-
8 field, a citizen of the State of Texas, the defendants in said bill.

The complainants in the fourth of said causes, Elizabeth H. Taylor, a citizen of the State of Massachusetts; Henry M. Alexander, a

citizen of the State of New York (as surviving executor of the last will and testament of Peter MacMartin, deceased); William L. Rolston, a citizen of the State of Ohio; Joseph Wotelbaum, a citizen of the State of New York; Charles A. Coe, a citizen of the State of New York; J. Sargent Smith, a citizen of the State of Massachusetts, and Arthur F. Gould, a citizen of the State of Massachusetts, bring their bill, by Henry C. Whitney, Esq., their solicitor, against J. B. Bozarth, M. E. Bozarth, Caleb Peddicord, A. J. Branson, Micajah Dalton, J. Ellis, A. Bowen, John Payne, John Bain, T. F. Bain, J. W. Atkinson, Michael Book, Elizabeth Smoke, William A. Dobbs, William Garrison, J. B. Scudamore, W. S. Ellis, L. J. Rider, L. Richards, Arch. Bean, C. M. Wakefield, Stephen J. Renfro, William Shaeffer, E. T. Hall, A. Winters, Hiram Tucker, Stephen Renfro, T. J. Prickett, J. K. Palmer, H. S. Palmer, S. Thompson, William
9 Gravitt, William Coursay, T. Skinner, S. Skinner, M. W. Reeves, E. S. K. Smalley, D. L. McCauley, Charles C. World, H. C. Harmick, J. P. Wilson, J. B. Varner, S. Atterbery, Alexander Gregory, William Wood, Joseph Taylor, James Taylor, D. M. Wallace, G. Gilliland, John W. Atterberry, J. G. Foster, John Curry, Lavinia Sumpter, J. Skelton, J. C. Chaffman, B. F. Chaffman, L. C. Coffman, B. F. Coffman, John S. Lusk, John S. Johnson, Welcome Compton, John W. Hilliard, Andrew Bleakley, George Pepperworth, Levi Garrison, Levi Garriss, and The Ætna Insurance Company, citizens of the State of Illinois, the defendants in said bill.

The intervening petitioner, Fernando B. Hane, a citizen of the State of Ohio, brings his petition, by Walter B. Scatts, his solicitor, against John J. Backman, John W. Kindle, John C. Bestow, Edward Bonham, Charles A. Beecher, R. L. Lambert, George Johnson, Leander Karn, Conrad Karn, Calvin Keston, L. C. Kaufmann, J. T. Kaufmann, Lucinda Sanders, Malinda Sanders, Ætna Life In-
10 surance Company, James R. Bain, B. Stevens, F. Stevens, Sarah Wilkinson, John Pykert, John R. Murphy, David B. Harlan, Alyshus Winters, Lewis J. Ryder, Alexis Ryder, Francis B. Merrill, Hiram Tucker, —— McKenzie, W. M. McRunnels, James A. Boyd, Lavinia Sumpter, Robley D. Adams, Jane Ridgway, Allen Cope, Wm. Robertson, Valentine C. Borah, Wm. N. Borah, John W. Johnson, Maria Harlan, and Benjamin S. Meeks, administrator; Charles Sibley, Reuben Meeks, Reuben G. Meeks, Joseph Odell, Jr., George F. Pykert, Benjamin S. Meeks, James P. Brockway, Edward Brockway, William Law, Samuel C. Pendleton, Erasmus W. Pendleton, James K. Parmer, Jasper Partridge, Wm. A. Atterbury, Eliza C. Yarzinger, Henry Freland, Thomas Behmyer, Wm. White, Robert T. Wilkinson, Wm. Smith, Thomas M. Say, Van R. Price, Wm. F. Spitler, James W. Calvin, Richard Campbell, Anderson Wall, Sterling M. Hill, Lyman E. McPettridge, James Simms, Charles Wood, James Crews, F. W. Tracy, Samuel A. Skinner, Wilkenson Brock, F. A. West, Samuel Booth, John L. Wagner, Wiley Hooper, Henry Washburn, James M. Harris, John Haeflele, Thomas J. Clarke, James Stroman, Landon C. Kelley,
11 John R. Odell, James M. Kelley, John Hanley, John Odell, John Johnson, Isaac Crumbacher, Gilbert J. George, Henry

G. Wheeler, Wm. Carson, Oliver P. Murphy, Jonathan Mills, Abner Cox, Wm. Rhode, J. C. Weaver, Hugh M. Sanderson, First National Bank of Olney, Illinois, J. H. Travis, Elias Cook, Wm. M. Branson, John W. Anderson, Aaron G. Clowd, A. W. Bruce, Jesse W. Clark, N. W. Harvey, Mary Ellis, Adaline Ellis, John J. Farmer, Martin M. Wheeler, Josiah C. Slaton, E. Constable, George W. Draper, Wm. Mabry, Louise J. Woody, Francis M. Fitch, Michael Arnold, Susan Pharr, Elias Free, John Harper, John Wade, Miles Griffin, A. P. Harris, Marshall Pool, Augusta Townsend, Ellen P. Peeples, Mary P. Docker, Samuel Thomas, J. Hunsinger, Wm. Richardson, George W. Odell, M. J. Dickenson, Wm. Britton, Milton Cravens, Daniel McCauley, John Funkhouser, Wm. H. Daniels, Nathan Veasey, Elizabeth Kelley, R. H. Prickett, H. Shucart, Sarah St. Leger, Theodore H. Hadley, Michael Hiller, J. B. Borah, James Merrick, Joseph Rogers, Geo. Fishell, James W. Bell, Emeline Austermann, Wm. J. Austermann, Sarah Austermann, John
12 J. Austermman, Sarilda Austermann, Anton Austermann, Adam Austermann, Elizabeth Laster, Marion Laster, Andrew Martin, James Martin, Robert T. Forth, Isaac Garretson, William Keen, Jonathan Bozarth, Sarah Bane, Wm. H. Grant, Z. T. Means, R. N. Puckett, Alfred Orr, Wm. Conway, M. F. Whitney, Matilda J. Skinner, and Miles Moore, all citizens of the State of Illinois, the defendants to said intervening petition.

The intervening petitioner, Lucinda A. Walker, a citizen and resident of the State of Massachusetts, brings her intervening petition, by H. C. Whitney, her solicitor, against H. Tomkins, Robert P. Hanna, John Garrison, George Warren, Lyna J. Branson, D. H. Clevinger, Simeon Matthews, John Keen, Jr., S. L. Austin, George B. Meyers, J. B. Scudamore, Samuel Booth, Charles Iler, Sarah A. St. Leger, Ann Walker, L. A. Skinner, L. H. Harris, Hiram Tucker, Henry T. Garrison, G. A. Bradford, Mary C. Given, Joshua Cook, John Dunham, Allen Lence, Anderson Malone, Douglas Putnam, Israel Waters, W. J. Huykendell, W. N. Dickey, J. B. Pen-
13 dleton, Oliver Holmes, John Robinson, C. M. Wakefield, M. M. McDougall, John W. Behymer, Robert A. Behymer, Sallie E. Heinz, Henry Rankins, R. F. Brown, J. H. Lockhart, Milton Holmes, H. R. Johnson, the heirs of J. J. R. Turney, Thomas Nesbit, D. W. Barkley, H. O. Broch, Thomas Mason, Cyrus Oakley, Levi Garrison, George Pepperworth, W. M. Havens, Albert Simms, C. L. Bowen, Oliver Tucker, William G. Woodford, William Walker, Catherine Steck, J. L. Harris, T. M. Rogers, W. Lockwood, I. B. Varner, E. T. Hall, H. C. Shelton, Wm. McKinney, Alex. McKinney, D. L. McCawley, G. T. Humberson, John Watson, J. R. Bain, Nathan Renfro, the defendants to said intervening petition.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 25th day of January, in the year of our Lord one thousand eight hundred and eighty-two, came James C. Cloyd, the complainant in the first of said consolidated causes, by his solicitor, and filed in the office of the

clerk of said court his bill and Exhibit- "A" and "B" thereto; which said bill and exhibits are in the words and figures following, to wit:

14 *Bill.*

UNITED STATES OF AMERICA:

Circuit Court for the Southern District of Illinois.

CLOYD
vs.
JORDAN *et al.*

To the judge of the circuit court of the United States for the southern district of Illinois:

James C. Cloyd, a citizen of the State of New York, brings this his bill against Clarissa Jordan, J. Giles, Samuel Mundy, William Sandlin, Sarah E. Morris, Henry T. Garrison, Samuel Garrison, heirs of Richard White (names to complainant unknown), James B. Manahan, Thomas F. Bain, William Shaeffer, E. T. Hall, Nathan Moon, John Pykeet, Lewis Crissell, Elizabeth E. Slover, F. M. Burgess, unknown heirs of J. J. R. Turney, Adam Osterman, Wm. J. Osterman, Welcome Pennington, Thomas Ayers, all citizens of the State of Illinois; William H. Grant, a citizen of the State of Colorado; W. J. Ford, a citizen of the State of Ohio; Samuel Sparks and F. M. Atteberry, both citizens of the State of Illinois.

15 And thereupon your orator complains and says that in the year 1859 the county of Wayne, in the State of Illinois, was the owner of a large amount of lands denominated swamp and overflowed lands, among which were the several tracts hereinafter specially named and described as belonging to your orator; that prior to that time a railroad company known as the Mt. Vernon Railroad Company had been chartered by the Legislature of said State of Illinois; that the people of said county, being desirous of securing the construction of said road or some other which proposed to run through said county, a vote was had by the legal voters of said county, under a law authorizing the same, on the question of donating said lands to some company that would build a road through said county, at which election a majority of the votes cast was in favor of such donation.

That afterwards, on the 20th day of April, 1859, the county court of said county, being the legal and constituted authority for that purpose, executed and delivered to one Isaac Seymour, of the

16 city of New York, a deed of trust and mortgage on said lands so owned by the county as aforesaid, and which included the lands hereinafter named as belonging to your orator, which mortgage and deed of trust recited that they were executed to secure the payment of $800,000 construction bonds issued or to be issued by said Mt. Vernon Railroad Company; that said mortgage and deed of trust were duly recorded in the recorder's office of said Wayne county in Book B of Mortgages, pages 330 and 341, on the 3rd day of May, 1859; that said bonds or a part thereof having passed into the

possession and ownership of various parties, on the 7th day of March, A. D. 1865, a bill was filed in this honorable court for the purpose of foreclosing said deed of trust and mortgage, wherein John W. Kennicott *et al.* were complainants and The Board of Supervisors of said Wayne County, impleaded with said Mt. Vernon Railroad Company, were defendants; that afterwards such proceedings were had in said cause that on the 24th day of June, 1877, a decree was made and entered therein by said court finding that there was due to the complainants therein
17 and other holders of said bonds, who were authorized by said decree to come in and be made parties to said suit, the sum of $1,122,041.73, and finding also that said deed of trust and mortgage were valid in law as a lien on the lands therein described for the amount found due as aforesaid; and thereupon said court ordered that said defendants pay to said complainants, and to such other holders of said bonds as might come in under said decree and accept the benefits thereof, the amount found due them as aforesaid, and in default of so doing the equity of redemption of said Wayne county, and of all others claiming through or under them, of, in and to said lands should be forever barred and foreclosed, and that said lands, should be sold by the master in chancery of said court, at public sale, to the highest bidder, for cash in hand, the proceeds of such sale to be applied, after deducting the costs of said suit and the expenses of sale, on such indebtedness so found due to the complainants in said suit, and other holders
18 of said bonds as aforesaid; and that on the expiration of the time allowed by law for redemption from such sale, and said lands remaining unredeemed, the said master in chancery should convey said lands to the purchaser or purchasers thereof or their assigns by good and sufficient deed or deeds.

That afterwards, on the 18th day of September, 1877, the amount so decreed to be paid as aforesaid not having been paid, John A. Jones, then master in chancery of said court, proceeded to sell said lands at public sale to the highest bidder therefor, due notice of the time and place of such sale having been given as required by law and by said decree, and at said sale all of said lands described in said deed of trust and mortgage and so ordered to be sold in and by said decree were struck off and sold by said master in chancery to Isaac Taylor, Richard P. Glenn, Stephen A. Goodwin, Norman M. Broadwell, and Samuel J. Crooks, as trustees for the several parties and beneficiaries in said decree named and provided for.

That the time of redemption from said sale having expired
19 and said lands not having been redeemed, the said John A. Jones, master in chancery as aforesaid, on or about the 27th day of May, 1879, executed and delivered to Norman M. Broadwell, to whom the certificate of purchase for said lands had been transferred, a deed for said lands so sold by said master as aforesaid; that said sale and conveyance were afterwards reported by said master to said court, and the same was approved by the court and became a part of the records in said cause.

Your orator further represents that the proceeds of such sale,

after deducting the costs of such suit and the expenses of sale, only amounted to about $620,000, leaving of the principal of said decree unpaid over $500,000 and the interest thereon.

Your orator would further represent unto your honor that through and by proper and legal conveyances made by said Broadwell and his grantees your orator became the owner of the lands described in schedule marked Exhibit "A," and which your orator prays may be taken as a part of this bill; that the amount set opposite each
20 tract in said schedule is the amount for which said tract was sold at the sale by the said master in chancery as aforesaid.

Your orator further shows that after the execution of the deed of trust and mortgage hereinbefore set forth and after the same had been duly filed for record in the recorder's office of said Wayne county, and before the filing of the bill to foreclose said mortgage and deed of trust, on March 7, 1865, the said county of Wayne conveyed, or attempted to, the lands to the several parties described in Exhibit "A," and that said lands are now claimed by such purchasers or their grantees, as set forth in schedule marked Exhibit "B," which your orator also prays may be taken as a part of this bill.

And the said parties described in said Exhibit "B," and who in the introductory part of this bill are named as defendants herein, now pretend to claim that, not having been made parties to said suit for foreclosure of John W. Kennicott *et al.* (none of said grantees from said Wayne county or their assigns having been made
21 parties thereto), they are not barred by said decree of foreclosure or the proceedings had thereunder, but pretend to claim that they are the owners in fee of said lands.

But your orator avers and charges that said parties so claiming or pretending to claim title from or through said Wayne county, after the execution of the deed of trust and mortgage as aforesaid, both of which were duly recorded in the recorder's office of said county prior to the date of any of the conveyances through or under which said parties claim or pretend to claim, only acquired the right to redeem said lands from said deed of trust and mortgage, and the only right or interest they now have in or to said lands or any part thereof is to redeem from such deed of trust and mortgage or from said sale made by the master in chancery as aforesaid; and your orator further says that the equity of redemption of all the lands included in said decree would amount in value to but a small part of the sum still unpaid on said decree.

Your orator further represents that, by virtue of the deed
22 of trust and mortgage hereinbefore set forth and the foreclosure thereof and sale and conveyance made by the master in chancery as aforesaid and by the subsequent conveyances made by said county to the several defendants herein or to their grantors, said Wayne county was divested of all right, title, interest, or claim in and to said lands or any part thereof. He further says that said premises as to equity belongs; and your orator, as in duty bound, will ever pray.

JAMES C. CLOYD,
Complainant.

E. BEECHER,
Sol. for Complainant.

county was not liable on the original indebtedness which said deed of trust and mortgage were executed to secure, and so your orator says said Wayne county is not in any manner interested in this present suit or in the subject-matter thereof.

Your orator further says that a copy of said deed of trust and mortgage, together with all the papers in the said case of John W. Kennicott *et al. vs.* The Board of Supervisors of Wayne County, impleaded, &c., still remain as a part of the records of this court, and also all the orders of this court made in said cause; to which papers, records, and proceedings your orator now refers, and asks that they may be taken and considered by the court as a part of this bill.

23 Your orator further says the matters in controversy in this suit exceed in value the sum of $500.

Wherefore, in consideration of the premises, your orator prays that a writ of subpœna may issue out of this honorable court commanding the said Clarissa Jordan, J. Giles, Samuel Mundy, William Sandlin, Sarah E. Morris, Henry T. Garrison, Samuel Garrison, unknown heirs of Richard White, James B. Manahan, Thomas F. Bain, William Shaiffer, E. T. Hall, Nathan Moore, John Pykeet, Lewis Crissell, Elizabeth E. Slover, F. M. Burgess, unknown heirs of J. J. R. Turney, Adam Osterman, Wm. J. Osterman, Samuel Sparks, F. M. Attebery, Welcome Pennington, Thomas Ayers, Wm. H. Grant, and W. J. Ford to appear in said court; that they be compelled to answer all and singular the allegations herein contained, but not under oath, the oath thereto being expressly waived; that an account be taken, under the directions of this honorable court, to ascertain how much is due on the decree herein described in the case of John W. Kennicott *et al. vs.* The Board of Supervisors

24 of Wayne County, and also that an account be taken to ascertain the amount for which each tract of land described in this bill was sold at the said master's sale, and the interest thereon from the day of such sale to the time of taking such account.

That said defendants, within a short time to be fixed by this court, pay to complainant the amount so found to be due on said decree, or, in the alternative, that each of said defendants pay to your orator the amount for which the lands so claimed by each of said defendants was sold for at said master's sale, with the interest thereon, and in default of making such payment that your honor, by a decree of this court, declare the equity of redemption of said defendant be forever barred and foreclosed; and if your honor should deem it right and equitable that the equity of redemption of said defendants in and to said premises should be sold, then that your honor order the same to be sold in such manner as may seem best to your honor.

25 That when the names of the unknown herein mentioned shall be ascertained they may by their proper designation be made defendants hereto.

And that your honor grant such other and further relief in the

[Endorsed:] Filed January 25, 1882. J. A. Jones, clerk.

EXHIBIT "A."

List of lands belonging to James C. Cloyd, with the names of parties to whom Wayne county conveyed it prior to March 7th, 1865, with the date of such conveyance; also the amount for which each tract was sold by J. A. Jones, master in chancery, on September 18th, 1877.

Part of section.	No. of sect.	Town.	Range.	Name of party to whom sold by Wayne county.	Date of conveyance by county.	Amount for which it was sold by master in chancery.
N e s e	26	2 n	7 e	Clarissa Jordan	Nov. 11, 1864	$240
S w s e	23	do.	9 '	J. Giles	Dec. 16, do.	240
26 N w s w	29	2 n	9 e	D. M. Armstrong	Jan'y 23, 1864	240
S w s e	"	"	"	D. W. Kennedy	Febr'y 8, "	240
S e s e	4	1 s	5 e	Andrew Martin	Nov. 28, "	240
N w n w	9	"	"	Isaac Garrison	Dec. 18, 1863	280
S w n w	"	"	"	do	" "	280
N e n w	11	2 s	6 e	Richard Grant	Dec. 2, "	240
N w n w	"	"	"	Thos. L. Cooper	June 8, "	240
S w n w	"	"	"	do	do.	240
S e n w	"	"	"	Richard Grant	Dec. 2, 1863	240
N w s w	"	"	"	C. Walter	Nov. 21, "	240
S w s w	"	"	"	James Bain	" 11, "	240
N e n e	10	3 s	7 e	E. T. Hall	Febr'y 4, 1864	160
N w n e	"	"	"	do	" "	160
S w n e	"	"	"	do	" "	160
S e n e	"	"	"	do	" "	160
N e n w	"	"	"	do	" "	160
N w n w	"	"	"	do	" "	160
S w n w	"	"	"	do	" "	160
S e n w	"	"	"	do	" "	160
N e s w	"	"	"	do	" "	160
N w s w	"	"	"	do	" "	160
S w s w	"	"	"	do	" "	160
S e s w	"	"	"	do	" "	160
N e s e	"	"	"	do	" "	160
27 N w s e	10	3 s	7 e	E. T. Hall	Febr'y 4, 1864	160
S w s e	"	"	"	do	" "	160
S e s e	"	"	"	do	" "	160
N w s e	11	1 n	5 e	J. J. R. Turney	" "	300
W ½ s w s e	"	"	"	do	" "	150
E ½ s w s e	"	"	"	do	" "	150
E ½ lot 1, n e q r	6	"	6 e	do	" "	480
N w s e	2	1 n	9 e	Anton Osterman	Oct. 27, 1863	400
N e n e	3	1 s	5 e	Ben. Simmons	Nov. 5, 1864	360
S e n e	"	"	"	Isham Simmons	" "	360
S e n w	29	2 n	9 e	Sam'l Sparks	March 5, "	240
N e n w	2	2 s	5 e	F. M. Attebery	Oct. 24, 1863	240

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

EXHIBIT "B."

List of lands belonging to J. C. Cloyd, with the names of claimants from Wayne county.

28 Part of section.	No. of sect.	Town.	Range.	Name of claimant from Wayne county who claim-title prior to March 7, 1865.
N e s e	26	2 n	7 e	Clarissa Jordan.
S w s e	23	"	9 e	J. Giles.
N w s w	29	"	"	Samuel Mundy.
S w s e	"	"	"	William Sandlin.
S e s e	4	1 s	5 e	Sarah E. Morris.
N w n w	9	"	"	Henry T. Garrison.
S w n w	"	"	"	Samuel Garrison.
N e n w	11	2 s	6 e	Wm. H. Grant.
N w n w	"	"	"	Heirs of Richard White.
S w n w	"	"	"	James B. Manahan.
S e n w	"	"	"	William H. Grant.
N w s w	"	"	"	James B. Manahan.
S w s w	"	"	"	Thomas F. Bain.
N e n e	10	3 s	7 e	William Shaeffer.
N w n e	"	"	"	E. T. Hall.
S w n e	"	"	"	Do.
S e n e	"	"	"	Nathan Moon.
N e n w	"	"	"	E. T. Hall.
N w n w	"	"	"	W. J. Ford.
S w n w	"	"	"	Do.
S e n w	"	"	"	E. T. Hall.
N e s w	"	"	"	Do.
N w s w	"	"	"	Do.
S w s w	"	"	"	Do.

29 Part of section.	No. of sect.	Town.	Range.	Name of claimant who claimed by title prior to March 7, 1865.
S e s w	10	3 s	7 e	E. T. Hall.
N e s e	"	"	"	Nathan Moon.
N w s e	"	"	"	John Pykeet.
S w s e	"	"	"	Do.
S e s e	"	"	"	Nathan Moon.
N w s e	11	1 n	5 e	Lewis Crissell.
W ½ s w s e	"	"	"	Elizabeth E. Slover.
E ½ s w s e	"	"	"	F. M. Burgess.
E ½ lot 1, n e qr	6	"	6 e	Heirs of J. J. R. Turney.
N w s e	2	"	9 e	Adam Osterman & Wm. J. Osterman.
N e n e	3	1 s	5 e	Welcome Pennington.
S e n e	"	"	"	Thomas Ayers.
S e n w	29	2 n	9 e	Samuel Sparks.
N e n w	2	2 s	5 e	F. M. Attebery.

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

And thereupon, to wit, on the 25th day of January, A. D. 1882, a chancery subpœna was issued out of said court directed to the marshal of said district to execute; which said chancery subpœna,
30 together with the return of the said marshal thereto, is in the words and figures following to wit:

Chancery Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to Clarissa Jordan, J. Giles, Samuel Mundy, William Sandlin, Sarah E. Morris, Henry T. Garrison, Samuel Garrison, unknown heirs of Richard White, James B. Manahan, Thomas F. Bain, William Shaeffer, E. T. Hall, Nathan Moon, John Pykeet, Lewis Crissell, Elizabeth E. Slover, F. M. Burgess, unknown heirs of J. J. R. Turney, Adam Osterman, William J. Osterman, Samuel Sparks, F. M. Attebery, Welcome Penington, Thomas Ayers, William H. Grant, and W. J. Ford, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of March next, to answer the bill of complaint of James C. Cloyd, this day filed in the clerk's office
31 of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-fifth day of January, in the year of our
[SEAL.] Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth year.

J. A. JONES, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

32 (*Marshal's Return.*)

I hereby appoint Nick S. McCown my special deputy to execute this writ.

Feb'y 1, 1882.

JACOB WHEELER, *U. S. M.*

I have served the annexed writ upon the persons named in the following manner, to wit:

Upon Joseph White & Martha J. Wheeler, heirs of Richard White, Feb. 8, 1882; upon J. B. Manahan, Feb. 10, 1882; upon F. M. Burgess & Wm. Shaeffer, Feb. 11, 1882; upon Sam'l Mundy, Sam'l Sparks, and E. T. Hall, Feb. 14th, 1882, by personally delivering to each of them a true copy of the same on the aforesaid days.

I also served the same upon the following-named defendants, not having been able to find them to serve personally, by leaving a true copy thereof for each of them at their usual place of abode with a person above the age of ten years and a member of their respective families, and to whom the contents were made known by me, to wit:

Upon Wm. White, heir of Rich'd White, Feb. 8th, 1882; upon Thos. F. Bain, Feb. 10, 1882; upon H. T. Garrison & Sam'l
33 Garrison, Feb. 11, 1882; upon Elizabeth E. Slover, Feb. 11, 1882; upon Wm. Sandlin, Feb. 13, 1882; upon W. J. Osterman & Adam Osterman, M'ch 2d, 1882.

The following-named persons cannot be found in my dist.: Jas. White & Thos. White, heirs of Rich'd White; John Pykeet, Nathan Moon, Welcome Pennington, Thos. Ayers, Lewis Crissel, Clarissa Jordan, J. Giles, Wm. J. Grant, W. J. Ford, Sarah E. Morris, & unknown heirs of J. J. R. Turney.

JACOB WHEELER, *U. S. M.*,
By NICK S. McCOWN, *Sp'l Deputy.*

(Endorsed:) Filed March 8, A. D. 1882. J. A. Jones, clerk.

And afterwards, to wit, on the 17th day of March, in the year last aforesaid (A. D. 1882), came the complainant, by his solicitor, and filed in the office of the clerk of said court his petition in said cause; which said petition is in the words and figures following, to wit:

34 *Petition to Withdraw Old and File New Cost Bond.*

Circuit Court of the United States, Southern District of Illinois.
January Term, A. D. 1882.

JAMES C. CLOYD *v.* CLARISSIA JORDAN *et al.*	No. 6306.	Bill in Chancery to Foreclose.
JOHN B. CORNELL *vs.* THOMAS J. PETTYJOHN *et al.*	No. 6308.	Same.
C. F. AUSTIN *v.* MICHAEL BOOK *et al.*	No. 6307.	Same.

To the Honorable S. H. Treat, presiding judge of said court:

Said complainants would respectfully represent that all costs in each of said cases up to this date have been paid by said complain-

ants. They would therefore ask to be allowed to withdraw the cost bond heretofore filed in said cases and signed by Edward Bonham and to substitute other security, to be approved by the clerk of this court.

March 17th, 1882.

EDWIN BEECHER,
Sol. for Compl'ts.

35 (Endorsed:) Filed March 17th, 1882. J. A. Jones, clerk.

And also upon the same day and year last aforesaid (March 17th, A. D. 1882) the following proceedings were had in said court in said cause and entered of record, to wit:

Leave to File New Cost Bond.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 203, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } T. No. 204, 6307. In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } T. No. 205, 6308. In Chancery.

It appearing to the satisfaction of the court that all the costs accrued in each of the three above-entitled causes to this date have been paid by the complainants, on motion of complainants, by Edwin Beecher, Esq., their solicitor, leave is granted them to withdraw the original cost bond herein executed by Edward
36 Bonham and to substitute other cost bonds.

Thereupon, on the same day and year last aforesaid, to wit, March 17th, 1882, came the complainant, by his solicitor, and filed in the office of the said clerk his bond for costs in said cause; which said bond for costs is in the words and figures following, to wit:

Cost Bond.

UNITED STATES OF AMERICA,
Southern District of Illinois, } *ss:*

Circuit Court. January Term, A. D. 1882.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } In Chancery.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to

any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid I hereby agree and stipulate that execution may issue against my property for any costs taxed against —.

Dated this sixteenth day of January, A. D. 1882.

HENRY C. WHITNEY.

(Endorsed:) Filed March 17, 1882. J. A. Jones, clerk.

37 Be it also remembered that on, to wit, the 25th day of January, in the year of our Lord one thousand eight hundred and eighty two, came the complainant in the second of said causes as consolidated, by his solicitor, and filed in the office of the clerk of said court his bill and Exhibits "A" and "B" thereto; which said bill and exhibits are in the words and figures following, to wit:

38 *Bill.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Southern District of Illinois.

AUSTIN
vs.
BOOK *et al.*

To the honorable judge of the circuit court of the United States for the southern district of Illinois:

C. T. Austin, a citizen of the State of New York, brings this his bill against Michael Book, John Smith, William Morris, T. H. B. Strowman, and Daniel L. McCauley, all citizens of the State of Illinois.

And thereupon your orator complains and says that in the year 1859 the county of Wayne, in the State of Illinois, was the owner of a large amount of lands, denominated swamp and overflowed lands, among which were the several tracts hereinafter specially named and described.

That prior to that time a railroad company, denominated the Mt. Vernon Railroad Company, had been chartered by said State
39 of Illinois; that the people of said county being desirous of securing the construction of said road or some other, which proposed to run through said county, a vote was had by the legal voters of said county, under a law authorizing the same, on the question of donating said lands to some company that would build a road through said county, at which election a majority of the votes cast were in favor of such donation.

That afterwards, on the 20th day of April, 1859, the county court of said county, being the legal and constituted authority for that purpose, executed and delivered to one Isaac Seymour, of the city of New York, a deed of trust and mortgage on said lands so owned by the county as aforesaid, and which included the lands hereinafter named and described as belonging to your orator, which mortgage

and deed of trust recited that they were executed to secure the payment of $800,000 construction bonds issued or to be issued by said Mt. Vernon Railroad Company.

40 That said mortgage and deed of trust were duly recorded in the recorder's office of said Wayne county, in Book B of Mortgage Records, on pages 330 and 341, on the 3d day of May, 1859.

That said bonds or a part of them having passed into the possession and ownership of various parties, on the 7th day of March, 1865, a bill was filed in this honorable court to foreclose said mortgage and deed of trust, wherein John W. Kennicott *et al.* were complainants and The Board of Supervisors of said Wayne County, impleaded with said Mt. Vernon Railroad Company, were defendants.

That afterwards such proceedings were had in said cause that on the 24th day of June, 1877, a decree was made and entered by said court finding there was due to said complainants and other holders of said bonds, who were authorized by said decree to come in and be made parties to said suit, the sum of $1,122,041.73, and finding also that said — of trust and mortgage were valid in law as a lien

41 on the lands therein described for the amount found due as aforesaid.

And thereupon said court ordered that said defendants in said suit pay to said complainants and to such other holders of said bonds as might come in under said decree and accept the benefits thereof the amount found due them as aforesaid; and in default of so doing the equity of redemption of said Wayne county and of all others claiming through or under them of, in, and to said lands should be forever absolutely barred and foreclosed, and that said lands should be sold by the master in chancery of said court, at public sale, to the highest bidder, for cash in hand, the proceeds of such sale to be applied, after deducting the costs of said suit and the expenses of sale, on such indebtedness so found due to the complainants in said suit and other holders of said bonds as aforesaid; and that on the expiration of the time allowed by law for (the) redemption from such sale and said lands remaining unredeemed the

42 said master in chancery should convey said lands to the purchaser or purchasers thereof or their assigns by good and sufficient deed or deeds; that afterwards, on the 18th day of September, 1877, the amount so decreed to be paid as aforesaid not having been paid, John A. Jones, then master in chancery of said court, proceeded to sell said lands at public sale to the highest bidder therefor, due notice of the time and place of such sale having been given as required by law and by said decree, and at said sale all of said lands described in said deed of trust and mortgage and so ordered to be sold in and by said decree were struck off and sold by master in chancery to Isaac Taylor, Richard P. Glenn, Stephen A. Goodwin, Norman M. Broadwell, and Samuel J. Crooks, as trustees for the several parties and beneficiaries in said decree named and provided for.

That, the time of redemption from said sale having expired and the said lands not having been redeemed, the said John A. Jones,

master in chancery as aforesaid, on or about the 27th day of
43 May, 1879, executed and delivered to Norman M. Broadwell, to whom the certificate of purchase for said lands had been transferred, a deed for said lands so sold by said master as aforesaid; that said sale and conveyance were afterwards, by said master, duly reported to said court, and the same were approved by the court and became a part of the records in said cause.

Your orator further represents that the proceeds of such sale, after deducting the costs of such suit and the expenses of sale, only amounted to about $620,000, leaving of the principal of said decree unpaid over $500,000 and the interest thereon.

Your orator would further represent unto your honor that through and by proper and legal conveyances made by said Broadwell and his grantees your orator became the owner of the lands described in schedule marked Exhibit "A," and which your orator prays may be taken as a part of this bill.

That the amount set opposite each tract in said schedule is
44 the amount for which said tract was sold at the sale by the said master in chancery as aforesaid.

Your orator further shows that after the execution of the deed of trust and mortgage hereinbefore set forth, and after the same had been duly filed for record in the recorder's office of said Wayne county, and before the filing of the bill to foreclose said mortgage and deed of trust, on March 7, 1865, the said county of Wayne conveyed the lands or attempted to do so to the several parties described in Exhibit "A," and that said lands are now claimed by such purchasers or their grantors, as set forth in schedule marked Exhibit "B," which your orator prays may be taken as a part of this bill.

And said parties described in said Exhibit "B," and who, in the introductory part of this bill, are named as defendants herein, now pretend to claim that, not having been made parties to said suit for foreclosure of John W. Kennicott *et al.* (none of said grantees
45 from said Wayne county or their assigns having been made parties thereto), they are not bound by said decree of foreclosure or the proceedings had thereunder, but pretended to claim that they are the owners in fee of said lands; but your orator avers and charges that said parties so claiming or pretending to claim title from or through said Wayne county after the execution of the deed of trust and mortgage as aforesaid, both of which were duly recorded in the recorder's office of said county prior to the date of any of the conveyances through or under which said parties claim or pretended to claim, only acquired the right to redeem said lands from said deed of trust and mortgage, and the only right or interest they now have in or to said lands or any part thereof is to redeem from such deed of trust and mortgage or from sale made by the master in chancery as aforesaid; and your orator further says that the equity of redemption of all the lands included in said decree would amount in value to but a small part of the unpaid
46 balance of said decree.

Your orator further represents that by virtue of the deed of trust and mortgage hereinbefore set forth and the foreclosure thereof

and the sale and conveyance made by the master in chancery as aforesaid and by the subsequent conveyances made by the said county to the several defendants herein or to their grantors said Wayne county was divested of all right, title, interest, or claim in and to said lands or any part thereof. He further says that said county was not liable on the original indebtedness which said deed of trust and mortgage were executed to secure, and so your orator says said Wayne county is not in any manner interested in this present suit or in the subject-matter thereof.

Your orator further says that a copy of said deed of trust and mortgage, together with all the papers in the said case of John W. Kennicott *et al. vs.* The Board of Supervisors of Wayne County, impleaded, &c., still remain as a part of the records of this court, and also all the orders of this court made in said cause, to which
47 papers, records, and proceedings your orator now refers and asks that they may be taken and considered by this court as a part of this case. He further says the matters in controversy in this suit exceed in value the sum of five hundred dollars.

Wherefore, in consideration of the premises, your orator prays that a writ of subpœna may issue out of this honorable court commanding the said Michael Book, John Smith, William Morris, T. H. B. Strowman, and Daniel L. McCauley to appear and answer this bill; that they be compelled to answer all and singular the allegations hereof, but not under oath, the same being hereby waived; that an account be taken, under the directions of this court, to ascertain how much is due on the decree herein described in the case of John W. Kennicott *et al. vs.* The Board of Supervisors of Wayne County; and also that an account be taken to ascertain the amount for which each tract of land described in this bill
48 was sold at the said master's sale and the interest thereon from the date of such sale to the time of taking such account; that said defendants, within a short time to be fixed by this court, pay into court for the benefit of your orator and such others as may be entitled to the same, if any, the amount so found to be due on said decree, or that said defendants severally pay to your orator the amount for which the lands so claimed by each of said defendants was sold at said master's sale, with the interest thereon, and, in default of making such payment within the time fixed by this court, that your honor, by a decree of this court, declare the equity of redemption of said defendants and each of them of, in, and to said lands and each tract thereof to be forever barred and foreclosed; and if your honor should deem it right and equitable that the equity of redemption of said defendants in and to said premises should be sold, then that your honor order the same to be sold in such manner as may seem best to your honor.

49 And that your honor grant such other and further relief in the premises as to equity belongs or as your orator may be entitled to ask; and your orator, as in duty bound, will ever pray.

E. BEECHER, *Sol. for Compl't.* C. T. AUSTIN, *Compl't.*

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

EXHIBIT "A."

List of lands belonging to C. T. Austin, with the names of parties to whom Wayne county conveyed prior to March 7, 1865, with the date of such conveyance; also the amount for which each tract was sold by John A. Jones, master in chancery, on September 18, 1877.

Part of section.	No. of sect.	Town.	Range.	Name of party to whom sold by Wayne county.	Date of conveyance by county.	Amount for which sold by master in chancery.
S e s e	11	2 s	6 e	Michael Book	Sept. 17, 1864	$240
N e n w	2	" "	9 "	John Reed	Febr'y 20, 1865	300
N w n w	2	" "	" "	Robert Thread	Dec. 5, 1863	300
S w n e	1	3 "	" "	T.H.B.Strowman	July 30, "	300
S w ¼	10	" "	" "	D. L. McCauly	May 7, 1864	480

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

50 EXHIBIT "B."

List of lands belonging to C. T. Austin, with the names of parties claiming through Wayne county.

Part of section.	No. of section.	Town.	Range.	Name of claimant from Wayne county who claimed title prior to March 7, 1865.
S e s e	11	2 s	6 e	Michael Book.
N e n w	2	" "	9 "	John Smith.
N w n w	2	" "	" "	William Morris.
S w n e	1	3 "	" "	T. H. B. Strowman.
S w ¼	10	" "	" "	D. L. McCauley.

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

And thereupon, to wit, on the same day and year last aforesaid, to wit, January 25th, 1882, a chancery subpœna was issued out of said clerk's office, directed to the marshal of said district to execute; which said subpœna, together with the return of the marshal thereto, is in the words and figures following, to wit:

51 *Subpœna.*

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

The United States of America to Michael Book, John Smith, William Morris, T. H. B. Strowman, and Daniel L. McCauley, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of March next, to answer the bill of complaint of C. T. Austin, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at
[SEAL.] Springfield aforesaid, this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and
52 eighty-two, and of our Independence the one hundredth and sixth year.

J. A. JONES, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

(*Marshal's Return.*)

I hereby appoint Nick S. McCown my special deputy to execute this writ.

Feb'y 1, 1882.

JACOB WHEELER, *U. S. M.*

I have served the within writ upon the persons therein named in the following manner, to wit: Upon Michael Book, Feb. 7, A. D. 1882; also upon D. L. McCauly, Feb. 13, A. D. 1882; upon Wm. Morris, Feb. 25th, 1882, by personally delivering to each of them a true copy of the same on the aforesaid days.

The following-named persons cannot be found in my dis-
53 trict: John Smith & T. H. B. Strowman.

JACOB WHEELER, *U. S. M.*,
By NICK S. McCOWN, *Sp'l Deputy.*

(Endorsed:) Filed March 8th, A. D. 1882. J. A. Jones, clerk.

And afterwards, to wit, on the 17th day of March, in the year last aforesaid (A. D. 1882), came the complainant, by his solicitor, and filed in the office of the said clerk his petition in said cause; which said petition is in the words and figures following, to wit:

Petition to Withdraw Old & File New Cost Bond.

Circuit Court of the United States, Southern District of Illinois.
January Term, A. D. 1882.

JAMES C. CLOYD *vs.* CLARISSA JORDAN *et al.*	No. 6306.	Bill in Chancery to Foreclose, &c.
JOHN B. CORNELL *vs.* THOMAS J. PETTYJOHN *et al.*	No. 6308.	Same.
C. T. AUSTIN *v.* MICHAEL BOOK *et al.*	No. 6307.	Same.

54 To the Honorable S. H. Treat, presiding judge of said court:

Said complainants would respectfully represent that all costs in each of said cases up to this date have been paid by said complainants. They would therefore ask to be allowed to withdraw the cost bond heretofore filed in said cases and signed by Edward Bonham and to substitute other security, to be approved by the clerk of this court.

March 17th, 1882.

EDWIN BEECHER,
Sol. for Compl'ts.

(Endorsed:) Filed March 17, 1882. J. A. Jones, clerk.

And thereupon, on the same day and year last aforesaid, to wit, Friday, March 17, 1882, the following proceedings were had in said court in said cause and entered of record, to wit:

Leave to File New Cost Bond.

JAMES C. CLOYD *v.* CLARISSA JORDAN *et al.*	T. No. 203, 6306.	In Chancery.
C. T. AUSTIN *v.* MICHAEL BOOK *et al.*	T. No. 204, 6307.	In Chancery.
55 JOHN B. CORNELL *v.* THOMAS J. PETTYJOHN *et al.*	T. No. 205, 6308.	In Chancery.

It appearing to the satisfaction of the court that all the costs ac-

crued in each of the three above-entitled causes to this date have been paid by the complainants, on motion of complainants, by Edwin Beecher, Esq., their solicitor, leave is granted them to withdraw the original cost bonds herein executed by Edward Bonham and to substitute other cost bonds.

Thereupon, on the same day and year last aforesaid (March 17th, A. D. 1882) came the complainant, by his said solicitor, and filed in the office of the said clerk his bond for costs in said cause; which said bond for costs is in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

Circuit Court. January Term, A. D. 1882.

C. T. AUSTIN
vs.
MICHAEL BOOK *et al.* } In Chancery.

56 I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by — I hereby agree and stipulate that execution may issue against my property for any costs taxed against —.

Dated this 17th day of March, A. D. 1882.

HENRY C. WHITNEY.

(Endorsed:) Filed March 17, A. D. 1882. J. A. Jones, clerk.

Be it also remembered that heretofore, to wit, on the 25th day of January, in the year of our Lord one thousand eight hundred and eighty-two, came John B. Cornell, the complainant in the third of said causes as consolidated, by his solicitor, and filed in said clerk's office his bill and exhibits thereto; which said bill and exhibits are in the words and figures following, to wit:

57 *Bill.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Southern District of Illinois.

CORNELL
vs.
PETTYJOHN *et al.* }

To the judges of the circuit court of the United States for the southern district of Illinois:

John B. Cornell, a citizen of the State of New York, brings this

his bill against Thomas J. Pettyjohn, unknown heirs of Wiley Henderson, dec'd, Jacob C. Williams, Richard Wilson, Samuel McGammon, William W. Speer, James W. Hilliard, Nicholas Kepper, Edward Baird, Beeson Davis, Samuel Sparks, James F. Cline, James McCleary, Otho W. Hooper, James Sessions, George Warren, Joseph Borland, Hiram Jones, Susan Pharr, William H. Dobbs, Jacob Pursley, Andrew Martin, William Pursley, Ansel K. Atteberry, Asa F. Atteberry, John M. Reed, Howland Tompkins, John Keene, Jr., Francis M. Atteberry, Joshua Cook, George C. Garrod, Richard Sanders, John Payne, N. N. Borah, J. E. McCormick, Richard E. Jenkins, L. D. Leach, John Smith, Thomas S. Walker, Joseph Copelin, George Gambrel, Daniel L. McCauley, M. J. Dickinson, T. H.
58 B. Strowman, Robert P. Hardy, Edward Bonham, Joseph Hutchinson, James Strowman, James B. Smith, J. S. King, Preston R. King, George F. Smith, William M. Branson, George Warren, all citizens of the State of Illinois, and C. M. Wakefield, a citizen of the State of Texas.

And thereupon your orator complains and says that in the year 1859 the county of Wayne, in the State of Illinois, was the owner of a large amount of lands, denominated swamp and overflowed lands, among which were the several tracts hereinafter specially named and described.

That prior to that time a railroad company, denominated the Mt. Vernon Railroad Company, had been chartered by the State of Illinois.

That the people of said county being desirous of securing the construction of said road, or some other which proposed to run through said county, a vote was had by the legal voters of said county, under a law authorizing the same, on the question of donating said
59 lands to some company that would build a road through said county, at which election a majority of the votes cast was in favor of such donation; that afterwards, on the 20th day of April, 1859, the county court of said county, being the legal and constituted authority for that purpose, executed and delivered to one Isaac Seymour, of the city of New York, a deed of trust and mortgage on said lands so owned by the county as aforesaid, and which included the lands hereinafter named and described as belonging to your orator, and which mortgage and deed of trust recited that they were executed to secure the payment of $800,000 construction bonds issued or to be issued by said Mt. Vernon Railroad Company.

That said mortgage and deed of trust were duly recorded in the recorder's office of said Wayne county, in Book B of Mortgages, pages 330 and 341, on the 3rd day of May, 1859; that said bonds or a part thereof having passed into the possession and ownership of various parties, on the 7th day of March, A. D. 1865, a bill was filed in this honorable court, wherein John W. Kennicott *et al.* were complainants and The Board of Supervisors of said Wayne
60 County, impleaded with said Mt. Vernon Railroad Company, were defendants.

That afterwards such proceedings were had in said cause that, on the 24th day of June, 1877, a decree was made and entered by said

court finding there was due to said complainants and other holders of said bonds who were authorized by said decree to come in and be made parties to said suit the sum of $1,122,041.73, and finding also that said deed of trust and mortgage were valid in law as a lien on the lands therein described for the amount found due as aforesaid; and thereupon said court ordered that said defendants pay to said complainants and to such other holders of said bonds as might come in under said decree and accept the benefits thereof the amount found due them as aforesaid, and in default of so doing the equity of redemption of said Wayne county and of all others claiming through or under them of, in, and to said lands should be forever and absolutely barred and foreclosed, and that said lands should be sold by the master in chancery of said court, at public sale, to the highest bidder, for cash in hand, the proceeds of such sale
61 to be applied, after deducting the costs of said suit and the expenses of sale, on such indebtedness so found due to the complainants in said suit and other holders of said bonds as aforesaid, and that on the expiration of the time allowed by law for redemption from such sale, and said lands remaining unredeemed, the said master in chancery should convey said lands to the purchaser or purchasers thereof or their assigns by good and sufficient deed or deeds; that afterwards, on the 18th day of September, 1877, the amount so decreed to be paid as aforesaid not having been paid, John A. Jones, then master in chancery of said court, proceeded to sell said lands, at public sale, to the highest bidder therefor, due notice of the time and place of such sale having been given as required by law and by said decree, and at said sale all of said lands described in said deed of trust and mortgage and so ordered to be sold in and by said decree were struck off and sold by said master in chancery to Isaac Taylor, Richard P. Glenn, Stephen A. Goodwin, Norman M. Broadwell, and Samuel J. Crooks, as trus-
62 tees for the several parties and beneficiaries in said decree named and provided for.

That the time of redemption from said sale having expired and the said lands not having been redeemed, the said John A. Jones, master in chancery as aforesaid, on or about the 27th day of May, A. D. 1879, executed and delivered to Norman M. Broadwell, to whom the certificate of purchase for said lands had been transferred, a deed for said lands so sold by said master as aforesaid; that said sale and conveyance were afterwards by said master duly reported to said court, and the same was approved by the court and became a part of the records in said cause.

Your orator further represents that the proceeds of such sale, after deducting the costs of such suit and the expenses of sale, only amounted to about $620,000, leaving of the principal of said decree unpaid over $500,000 and the interest thereon.

Your orator would further represent unto your honor that, through and by proper and legal conveyances made by said
63 Broadwell and his grantees, your orator became the owner of the lands described in schedule marked Exhibit "A," and which your orator prays may be taken as a part of this bill; that

the amount set opposite each tract in said schedule is the amount for which said tract was sold at the sale by the said master in chancery as aforesaid.

Your orator further shows that after the execution of the deed of trust and mortgage hereinbefore set forth and after the same had been duly filed for record in the recorder's office of said Wayne county and before the filing of the bill to foreclose said mortgage and deed of trust, on March 7, 1865, the said county of Wayne conveyed the lands, or attempted to do so, to the several parties described in Exhibit "A," and that said lands are now claimed by such purchasers or their grantees, as set forth in schedule marked Exhibit "B," which your orator prays may be taken as a part of this bill.

And the said parties described in said Exhibit "B" and who, in the introductory part of this bill, are named as defendants
64 herein now pretend to claim that, not having been made parties to said suit for foreclosure of John W. Kennicott *et al.* (none of said grantees from said Wayne county or their assigns having been made parties thereto), they are not bound by said decree of foreclosure or the proceedings had thereunder, but pretend to claim that they are the owners in fee of said lands; but your orator avers and charges that said parties so claiming or pretending to claim title from or through said Wayne county after the execution of the deed of trust and mortgage as aforesaid, both of which were duly recorded in the recorder's office of said county prior to the date of any of the conveyances through or under which said parties claim or pretend to claim, only acquired the right to redeem said lands from said deed of trust and mortgage, and the only right or interest they now have in or to said lands or any part thereof is to redeem from such deed of trust and mortgage or from said sale made by the master in chancery as aforesaid; and your orator further says that the equity of redemption of all the lands
65 included in said decree would amount in value to but a small part of the sum still due on said decree.

Your orator further represents that by virtue of the deed of trust and mortgage hereinbefore set forth and the foreclosure thereof, and sale and conveyance made by the master in chancery as aforesaid, and by the subsequent conveyances by said county to the several defendants herein or to their grantors said Wayne county was divested of all right, title, interest, or claim in and to said lands or any part thereof.

He further says that said county was not liable on the original indebtedness which said deed of trust and mortgage were given to secure, and so your orator says said Wayne county is not in any manner interested in this present suit or in the subject-matter thereof.

Your orator further says that a copy of said deed of trust and mortgage, together with all the papers in the said case of John W. Kennicott *et al. vs.* The Board of Supervisors of Wayne
66 County, impleaded, &c., still remain as a part of the records of this court, and also all the orders of this court made in said

cause, to which papers, records, and proceedings your orator now refers and asks that they may be taken and considered by the court as a part of this case; and your orator further says the matters in controversy in this suit are of the value of over $500.

Wherefore, in consideration of the premises, your orator prays that a writ of subpœna may issue out of this honorable court commanding the said Thomas J. Pettyjohn, unknown heirs of Wiley Henderson, dec'd, Jacob C. Williams, Richard Wilson, Samuel McGammon, Willis W. Speer, James W. Hilliard, Nicholas Kepper, Edward Baird, Beeson Davis, Samuel Sparks, James F. Cline, James McCleary, Otho W. Hooper, James Sessions, George Warren, Joseph Boreland, Hiram Jones, Susan Pharr, William H. Dobbs, Jacob Pursley, Andrew Martin, William Pursley, Ansel K. Atteberry, Asa F. Atteberry, John M. Reed, Howland Tompkins, John Keen, Jr.,
67 Francis Atteberry, Joshua Cook, George C. Garrod, Richard Sanders, John Payne, N. N. Borah, J. E. McCormick, Richard E. Jenkins, L. D. Leach, John Smith, Thomas S. Walker, Joseph Copelin, George Gambrel, Daniel L. McCauley, M. J. Dickinson, T. H. B. Strowman, Robert P. Hardy, Edward Bonham, Joseph Hutchinson, James Strowman, James B. Smith, J. S. King, Preston R. King, George F. Smith, William M. Branson, George Warren, and C. M. Wakefield to appear in said court and answer all the *all the* allegations of this bill, but not under oath, the oath thereto being hereby expressly waived.

That an account be taken, under the directions of this court, to ascertain how much is due on the decree herein described in the case of John W. Kennicott *et al. vs.* The Board of Supervisors of Wayne County, and also that an account be taken to ascertain the amount for which each tract of land described in this bill and claimed by your orator was sold at the said master's sale and the interest thereon from the day of such sale to the time of taking such account.

68 That said defendants within a short time, to be fixed by this court, pay the complainant the amount so found to be due on said decree, or, in the alternative, that each of said defendants pay to your orator the amount for which the lands so claimed by each of said defendants was sold at said master's sale, with the interest thereon, and in default of making such payment that your honor, by decree of this court, declare the equity of redemption of said defendants and each of them of, in, and to said lands so owned by your orator as aforesaid be forever barred and foreclosed, and if your honor should deem it right and equitable that the equity of redemption of said defendants in and to said premises should be sold, then that your honor order the same to be sold in such manner as may be just and equitable.

That when the names of the unknown heirs herein mentioned shall be ascertained they may, by their proper designation, be made defendants hereto.

69 And that your honor grant such other and further relief

in the premises as to equity belongs or as your orator may be entitled to ask; and your orator, as in duty bound, will ever pray.

JOHN B. CORNELL, *Compl't.*

E. BEECHER,
Sol. for Compl't.

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

EXHIBIT "A."

List of lands belonging to John B. Cornell, with the names of parties to whom Wayne county conveyed prior to March 7th, 1865, with the date of such conveyance; also the amount for which each tract was sold by J. A. Jones, master in chancery, on September 18, 1877.

70. Part of section.	No. of sect.	Town.	Range.	Name of grantee from the county.	Date of conveyance by the county.	Amount for which sold by the Co.
N e se	22	2 n	7 e	Wiley Henderson	Feb'ry 15, 1864	$220
N w se	"	"	"	T. J. Pettyjohn	" "	220
N w se	19	"	9 e	J. C. Williams	Jan'y 23, "	240
S w se	"	"	"	Richard Wilson	" 16, "	240
S e se	"	"	"	J. C. Williams	" 13, "	240
N w s w	20	"	"	Sam'l McGammon	Feb'ry 4, "	240
S w s w	"	"	"	------do	Oct. 8, "	240
S e s w	"	"	"	W. C. Latimore	Feb'ry 4, "	240
N w n e	29	"	"	------do	Oct. 8, "	240
N e n w	"	"	"	Nicholas Kepper	March 12, "	240
N w n w	"	"	"	Richard Wilson	Jan'y 27, "	240
S w n w	"	"	"	Edward Baird	Feb'ry 22, "	240
E ½ s e n w	"	"	"	Samuel Sparks	March 6, "	120
W ½ s e n w	"	"	"	------do	" "	120
N e n e	30	"	"	D. M. Latimore	Jan'y 14, 1863	240
S e n e	"	"	"	Jas. McCleary	" 23, 1864	240
S e se	2	1 n	5 e	Lewis Powlass	Dec. 27, 1862	240
S w n e	11	"	"	Jane Sessions	" 4, 1863	390
S e se	26	"	"	Silas D. Jones	Nov. 18, 1862	240
N w s w	"	"	"	Joseph Boreland	Oct. 17, 1864	240
S w s w	"	"	"	------do	" "	240
N e n w	10	"	9 e	Susannah Pharr	Feb'y 27, "	240
N e n e	1	3 s	"	D. L. McCauley	May 7, 1864	240
S e n e	"	"	"	George Gambrel	Oct. 14, 1859	240
S w s w	"	"	"	D. L. McCauley	May 7, 1864	240

Exhibit "A"—Continued.

71 Part of section.	No. of sect.	Town.	Range.	Name of purchaser from county.	Date of conveyance from county.	Am't of sale by master.
S e s w	1	3 s	9 e	D. L. McCauley	May 7, 1864	240
N e s e	"	"	"	"	" "	240
N w s e	"	"	"	T. H. B Strowman	July 30, 1863	240
S w s e	"	"	"	------do	" "	240
S e s e	"	"	"	D. L. McCauley	May 7, 1864	240
N w n e	2	"	"	------do	Dec. 19, 1863	240
S w n e	"	"	"	------do	May 7, 1864	240
N e n w	"	"	"	M. Terrill	April 11, "	240
N w n w	"	"	"	D. L. McCauley	May 7, "	240
S w n w	"	"	"	"	" "	240
S e n w	"	"	"	M. Terrill	April 11, 1864	240
S w s w	"	"	"	Jas. Struman	Sept. 24, 1863	240
N w n e	3	"	"	D. L. McCauley	May 7, 1864	240
S w n e	"	"	"	"	" "	240
W ½ s e	15	"	"	Landen C. Kelly	Oct. 6, 1863	320
N e n w	10	2 s	9 e	R. C. Fowler	Oct. 14, 1864	240
S w s w	26	1 n	"	Joseph Borland	Nov. 17, 1864	240
E ½ s e	"	1 s	"	D. H. Clevenger	Oct. 27, 1863	480
S e s e	"	1 n	"	Silas D. Jones	Nov. 18, "	240
S e s w	23	"	"	Wm. H. Dobbs	Feb'y 24, 1863	400
N e s w	4	1 s	5 e	G. W. Wickersham	Sept. 25, 1863	240
N e s e	"	"	"	Andrew Martin	Nov. 28, 1864	240
N w s e	"	"	"	G. W. Wickersham	Sept. 25, 1863	240
N w s w	25	"	"	Ansel K. Attebery	Oct. 27, 1863	340
S w s w	25	"	"	Asa F. Attebery	" "	340
72 N w n w	26	1 s	5 e	John M. Reed	Oct. 3, 1863	240
N e s e	26	"	"	F. M. Atteberry	" 27, "	240
N w s e	"	"	"	M. W. Rogers	Nov. 17, "	240
S w s e	"	"	"	A. K. Attebery	Oct. 27, 1863	240
S e s e	"	"	"	F. M. Attebery	" "	240
N w s w	31	"	"	Wesley Gregory	March 28, 1864	240
S w s w	"	"	"	Wm. R. Wiggins	July 6, "	240
N e n w	14	2 s	"	Richard Sanders	Nov. 1, "	240
N w s e	28	"	"	John Payne	" 19, 1863	400
N e s e	22	"	6 "	N. N. Borah	Dec. 8, "	240
S e s e	"	"	"	"	"	240
N w s w	23	"	"	"	"	240
S w s w	"	"	"	"	"	240
S w s w	25	"	"	C. M. Wakefield	Aug. 16, 1864	240
S e s w	"	"	"	"	" "	240
S e n w	7	"	"	Sam'l Miller	March 6, 1865	200
N w s w	32	"	"	J. B. Mitchell	Feb'ry 16, "	480
N w n w	10	"	9 e	D. K. Fowler	Nov. 26, 1864	360
S w n w	"	"	"	"	" "	360
S e n w	"	"	"	R. C. Fowler	Oct. 14, 1864	360
S w s e	18	3 s	7 e	Thos. S. Walker	April 9, 1863	200

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

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EXHIBIT "B."

List of lands belonging to John B. Cornell, with the name of present claimant from Wayne county.

Part of section.	No. of sect.	Town.	Range.	Name of present claimant.
N e s e	22	2 n	7 e	Heirs of Wiley Henderson.
N w s e	"	"	"	Thos. J. Pettyjohn.
N w s e	19	"	9 e	Jacob C. Williams.
S w s e	"	"	"	Richard Wilson.
S e s e	"	"	"	Jacob C. Williams.
N w s w	20	"	"	Samuel McGammon.
S w s w	"	"	"	Willis W. Speer.
S e s w	"	"	"	James W. Hilliard.
N w n e	29	"	"	Willis W. Speer.
N e n w	"	"	"	Nicholas Kepper.
N w n w	"	"	"	Richard Wilson.
S w n w	"	"	"	Edward Baird.
E ½ s e n w	"	"	"	Beeson Davis.
W ½ s e n w	"	"	"	Samuel Sparks.
N e n e	30	"	"	James F. Cline.
S e n e	"	"	"	James McCleary.
S e s e	2	1 n	5 e	Otho W. Hooper.
S w n e	11	"	"	Jane Sessions.
S e s e	26	"	"	George Warren.
N w s w	"	"	"	Joseph Bareland.
S w s w	"	"	"	Hiram Jones.
74 N e n w	10	1 n	9 e	Susan Pharr.
S e s w	23	"	"	Wm. H. Dobbs.
N e s w	4	1 s	5 e	Jacob Pursley.
N e s e	"	"	"	Andrew Martin.
N w s e	"	"	"	Wm. Pursley.
N w s w	25	"	"	Ansel K. Attebery.
S w s w	"	"	"	Asa F. Attebery.
N w n w	26	"	"	John M. Reed.
N e s e	"	"	"	H. Tompkins.
N w s e	"	"	"	John Keene, Jr.
S w s e	"	"	"	Francis M. Attebery.
S ½ s e s e	"	"	"	Joshua Cook.
N ½ " "	"	"	"	H. Tompkins.
N w s w	31	"	"	George C. Garrod.
S w s w	"	"	"	Do.
N e n w	14	2 s	5 e	Richard Sanders.
N w s e	28	"	"	John Payne.
N e s e	22	"	6 e	N. N. Borah.
S e s e	"	"	"	"
N w s w	23	"	"	"
S w s w	"	"	"	"
S w s w	25	"	"	C. M. Wakefield.
S e s w	"	"	"	"
S e n w	7	"	"	J. E. McCormack.
N w s w	32	"	"	Richard A. Jenkins.

Exhibit "B"—Continued.

75 Part of section.	No. of sect.	Town.	Range.	Name of present claimant from county.
N w n w	10	2 s	9 e	L. D. Leach.
S w n w	"	"	"	Do.
S e n w	"	"	"	John Smith.
S w s e	18	3 s	7 e	Thos. S. Walker.
N e n e	1	"	9 e	Joseph Copeland.
S e n e	"	"	"	George Gambrel.
S w s w	"	"	"	D. L. McCauley.
S e s w	"	"	"	M. J. Dickerson.
N e s e	"	"	"	Do.
N w s e	"	"	"	T. H. B. Strowman.
S w n e	"	"	"	Do.
S e s e	"	"	"	M. J. Dickerson.
N w n e	2	"	"	Robert P. Hardy.
S w n e	"	"	"	Do.
N e n w	"	"	"	Edward Bonham.
N w n w	"	"	"	Joseph Hutchinson.
S w n w	"	"	"	Do.
S e n w	"	"	"	Edward Bonham.
S w s w	"	"	"	James Strowman.
N w n e	3	"	"	James B. Smith.
S w n e	"	"	"	Joseph Hutchinson.
W ½ s e	15	"	"	J. S. King.
N e n w	10	2 s	"	Preston R. King.
N w s w	32	"	5 e	Richard E. Jenkins.
S w s w	26	1 n	"	Geo. F. Smith.
E ½ s e	"	1 s	"	Wm. M. Branson.
S e s e	"	1 n	"	George Warren.

(Endorsed:) Filed January 25, 1882. J. A. Jones, clerk.

76 And thereupon, to wit, on the day and year last aforesaid (January 25th, 1882), there was issued out of said clerk's office a chancery subpœna in said cause, directed to the marshal of said district to execute; which said subpœna, together with the return of said marshal thereto, is in the words and figures following, to wit:

Chancery Subpœna.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

The United States of America to Thomas J. Pettyjohn, unknown heirs of Wiley Henderson, dec'd, Jacob C. Williams, Richard Wilson, Samuel McGammon, Willis W. Speer, James W. Hilliard, Nicholas Kepper, Edward Baird, Beeson Davis, Samuel Sparks, James F. Cline, James McCleary, Otho W. Hooper, Jane Sessions, George Warren, Joseph Boreland, Hiram Jones, Susan Pharr, William H. Dobbs, Jacob Pursley, Andrew Martin, William Pursley, Ansel K. Atteberry, Asa F. Atteberry, John M.

Reed, Howland Tompkins, John Keen, Jr., Francis Atte-
77 berry, Joshua Cook, George C. Gorrod, Richard Sanders, John Payne, N. N. Borah, J. E. McCormack, Richard E. Jenkins, L. D. Leach, John Smith, Thomas S. Walker, Joseph Copelin, George Gambrel, Daniel L. McCauley, M. J. Dickinson, T. H. B. Strowman, Robert P. Hardy, Edward Bonham, Joseph Hutchinson, James Strowman, James B. Smith, J. S. King, Preston R. King, George F. Smith, William M. Branson, George Warren, and C. M. Wakefield, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of March next, to answer the bill of complaint of John B. Cornell this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

78 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Spring-
[SEAL.] field aforesaid, this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth year.

J. A. JONES, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court at Springfield aforesaid on or before the day to which *to which* the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

(*Marshal's Return.*)

I hereby appoint Nick S. McCown my special deputy to execute this writ.

Feb'y 1, 1882.

JACOB WHEELER, *U. S. M.*

79 I have served the annexed writ upon the persons therein named in the following manner, to wit:

Upon J. W. Hilliard & N. N. Borah, Feb. 10th, 1882; upon Asa F. Atteberry, Feb. 11th, 1882; upon Thos. J. Pettyjohn, J. C. Williams, Rich'd Wilson, D. L. McCauley, & John Keen, Jr., Feb. 13th, 1882; upon Susan Pharr, Sam'l Sparks, & P. R. King, Feb. 14th, 1882; upon H. Tompkins, Feb. 18th, 1882; upon A. K. Atteberry, Feb. 24, 1882; upon J. F. Cline & E. Beard, March 2d, 1882, by

personally delivering to each of them a true copy of the same on the aforesaid days.

I also served the same upon the following-named defendants, not having been able to find them to serve personally, by leaving a true copy thereof for each of them at their usual place of abode with a person above the age of ten years and a member of their respective families, and to whom the contents were made known by me, to wit: Upon Andrew Martin, Geo. C. Garrod, & Geo. Warren, Feb. 11th, 1882; upon Jas. McCleary & Wm. H. Dobbs, M'ch 2d, 1882.

The following-named persons cannot be found in my district:

80 John Payne, Rich'd Sanders, Geo. Gambrel, Jas. Strowman, Rich. E. Jenkins, Jno. M. Reed, J. E. McCormack, Jas. B. Smith, L. D. Leech, Francis Atteberry, Willis W. Speer, J. S. King, John Smith, Joshua Cook, Sam'l McGammon, Geo. F. Smith, Hiram Jones, Jane Sessions, Heirs Wiley Henderson, R. P. Hardy, Jacob Pursley, Joseph Boreland, Joseph Copelin, Otho W. Hooper, W. M. Branson, Thos. L. Walker, M. J. Dickinson, Beeson Davis, T. H. B. Strowman, Nick Kepper, & Joseph Hutchinson.

JACOB WHEELER, *U. S. M.*,
By NICK S. McCOWN, *Sp'l Deputy.*

(Endorsed:) Filed March 8, A. D. 1882. J. A. Jones, clerk.

And afterwards, to wit, on the 17th day of March, in the year last aforesaid (A. D. 1882), came the complainant, by his solicitor, and filed in the office of the clerk his petition in said cause; which said petition is in the words and figures following, to wit:

Petition to File New Cost Bond.

Circuit Court of the United States, Southern District of Illinois.
January Term, A. D. 1882.

81 JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.*
} No. 6306. Bill in Chancery to Foreclose.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.*
} No. 6308. Same.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.*
} No. 6307. Same.

To the Honorable S. H. Treat, presiding judge of said court:

Said complainants would respectfully represent that all costs in each of said cases up to this date have been paid by said complainants. They would therefore ask to be allowed to withdraw the cost bond heretofore filed in said cases and signed by Edward Bon

ham and to substitute other security to be approved by the clerk of this court.

March 17th, 1882.

EDWIN BEECHER,
Sol. for Compl'ts.

(Endorsed:) Filed March 17th, 1882. J. A. Jones, clerk.

82 Thereupon, to wit, on the same day and year last aforesaid (to wit, Friday, the 17th day of March, 1882), at the January term of said court, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Allowing Compl't to File New Cost Bond.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 203, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } T. No. 204, 6307. In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } T. No. 205, 6308. In Chancery.

It appearing to the satisfaction of the court that all the costs accrued in each of the three above-entitled causes to this date have been paid by the complainants, on motion of complainants, by Edwin Beecher, Esq., their solicitor, leave is granted them to withdraw the original cost bonds herein executed by Edward Bonham, and to substitute other cost bonds.

83 And thereupon, to wit, on the same day and year last aforesaid, to wit, March 17, A. D. 1882, came the complainant, by his solicitor, and filed in the office of the said clerk his bond for costs in said cause; which said bond for costs is in the words and figures following, to wit:

Cost Bond.

UNITED STATES OF AMERICA,
Southern District of Illinois, } *ss:*

Circuit Court. January Term, A. D. 1882.

J. B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to

any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by — I hereby agree and stipulate that execution may issue against my property for any costs taxed against —.

Dated this sixteenth day of March, A. D. 1882.

HENRY C. WHITNEY.

(Endorsed:) Filed March 17, A. D. 1882. J. A. Jones, clerk.

84 And afterwards, to wit, on the 18th day of May, in the year of our Lord one thousand eight hundred and eighty-three, came the defendants, by their solicitor, H. Tompkins, and filed in the office of the clerk of said court their demurrer in said cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In Circuit Court of United States, Southern District Illinois. January Term, 1883.

JOHN B. CORNELL
v.
THOS. J. PETTYJOHN *et al.* } Bill to Aid Foreclosure.

The demurrer of Jacob C. Williams, Sm. Sparks, James McCleary, Geo. Warren, Hiram Jones, Andrew Martin, A. K. Atteberry, A. F. Atteberry, Howland Tompkins, Francis Atteberry, Geo. C. Garrod, N. N. Borah, Preston R. King, Geo. F. Smith, Wm. M. Branson, Geo. Warren, defendants, to the complainants' bill of complaint.

The defendants demur to said bill and for cause of demur-
85 rer show that the complainants have not in and by said bill made or stated such a case as entitles them in a court of equity to any discovery or relief from or against them or either of the def'ts touching the matters contained in the said bill or any of such matter-.

And for further cause of demurrer these def'ts show:

1st. That it appears by the said bill of complaint that there is no privity between the compl'ts and these def'ts to enable the compl'ts to call upon the def'ts for the payment of any debt due by the Mt. V. R. R. Co. on their obligations, bonds, or coupons to the compl't from the defendant or either of them.

2nd. That compl'ts have not, as appears by their said bill, made out any title to the relief thereby prayed; that if any right of action ever existed the same is barred by the statute of limitations.

3. That the compl'ts have not in their said bill of complaint stated any facts to show that they were compelled to pay any portion of the debt of the Mt. V. R. R. Co., as evidenced by their obligations, bonds, or coupons, or that they, being a few of the per-
86 sons holding the same, or as purchasers at the sale under the

foreclosure, should be substituted or subrogated to any further right in the premises, or to have a partial foreclosure for a part of the lands described in the mortgage in this their bill of complaint sought by a part of the purchasers under their foreclosure, already had, of all lands and by all parties in interest against these def'ts and these separate tracts, as set out and described in compl'ts' bill.

4th. That by compl'ts' bill of complaint it appears that no further relief in equity can be had to compl'ts; that a foreclosure was had for all parties having a like interest in the foreclosure against all property, with decree, sale, and conveyances had thereunder, without making def'ts parties thereto or seeking relief against def'ts' title.

5th. That compl't-, by *his* bill of complaint seeking relief by a supplemental and additional foreclosure, do*es* not set up any facts supplemental to or occurring after the filing of the original bill to charge def'ts with the original proceedings or entitling the compl'ts to any relief by a supplemental and an additional foreclosure.

6th. That complainants in their — do not set up facts to charge def'ts with notice of any indebtedness of the Mt. Vernon R. R. Co. nor of any trust deed or mortgage as a security and lien for such payment against def'ts or def'ts' lands to authorize a foreclosure.

87 7th. That compl'ts, by their bill of complaint setting out that defendants purchased said mortgaged lands before any suit to foreclose was commenced, and that compl'ts got title by and through such foreclosure without def'ts being party thereto, show to the court that no new matter has or is pretended to have arisen since the original bill was filed, or that def'ts should be made party thereto by this proceeding of the compl'ts, as charged by said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and pray the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and they pray to be dismissed with their reasonable costs in this behalf sustained.

FRANCES ATTEBERRY,
GEO. C. GARROD,
N. N. BORAH,
GEO. WARREN,
HIRAM JONES,
ANDREW MARTIN,
A. K. ATTEBERRY,
A. F. ATTEBERRY,
P. R. KING,
GEO. SMITH,
JACOB C. WILLIAMS,
S'M'L SPARKS,
JAMES McCLEARY,
GEO. WARREN,
W. H. BRANSON,
Per H. TOMPKINS, *Their Att'y.*

H. TOMPKINS, *Def'ts' Sol.*

88 I certify that in my opinion the foregoing demurrer of the said def'ts to the bill of compl't of the compl'ts is well founded in law and proper to be filed in the above cause.

H. TOMPKINS,
Sol. for Def'ts

UNITED STATES OF AMERICA, } ss:
Southern District Ill., }

H. Tompkins, att'y for def'ts, and the defendants hereto subscribing, on oath states that they have heard read the foregoing demurrer to the bill of compl't of the compl'ts therein named in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein; and H. Tompkins, att'y for the def'ts, states that he is the adviser and att'y of the said def'ts, and that he has advised and counseled the filing of the said demurrer as the proper pleading to dismiss the said suit.

H. TOMPKINS.

(Endorsed:) Filed May 18th, A. D. 1883. J. A. Jones, clerk.

89 Be it remembered that heretofore, to wit, on the 26th day of January, in the year of our Lord one thousand eight hundred and eighty-two, came the complainants in the fourth of said causes as consolidated, by H. C. Whitney, Esq., their solicitor, and filed in the office of the clerk of said court their bond for costs and bill in said cause; which bond and bill are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

Circuit Court. February Term, A. D. 1882.

ELIZABETH H. TAYLOR, HENRY M. ALEXANDER, Wm. L. Rolston, Joseph Waxelbaum, Charles A. Coe, J. Sargent Smith, Arthur F. Gould
vs.
J. B. BOZARTH & Others. } In Chancery.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 26th day of January, 1882.

HENRY C. WHITNEY.

(Endorsed:) Filed January 26, A. D. 1882. J. A. Jones, clerk.

90 *Bill.*

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

TAYLOR *et al.*
vs.
BOZARTH *et al.*

To the honorable judges of the circuit court of the United States for the southern district of Illinois:

Elizabeth H. Taylor, of Brookline, Massachusetts, and a citizen of the State of Massachusetts; Henry M. Alexander, of New York city, and a citizen of the State of New York (the latter as surviving executor of the last will and testament of Peter McMartin, deceased); William L. Rolston, of Marietta, Ohio, and a citizen of the State of Ohio; Joseph Waxelbaum, of New York city, and a citizen of the State of New York; Charles A. Coe, of New York city, and a citizen of the State of New York; J. Sargent Smith, of Leicester, Massachusetts, and a citizen of the State of Massachusetts; Arthur F. Gould, of Lexington, Massachusetts, and a citizen of the State of Massachusetts, bring this their bill against J. B. Bozarth, M. E. Bozarth, Caleb Peddicord, A. J. Bransen, Micajah Dalton, J. Ellis, A. Bowen, John Payne, John Bain, T. F. Bain, J. W. Atkinson, Michael Book, Elizabeth Smoke, William A. Dobbs, William Garrison, J. B.
91 Scudmore, W. S. Ellis, L. J. Rider, L. Richards, Arch. Bean, C. M. Wakefield, Stephen J. Renfra, William Shaeffer, E. T. Hall, A. Winters, Hiram Tucker, Stephen Renfra, T. J. Buckett, J. K. Palmer, H. S. Palmer, L. Thompson, William Gravitt, William Coursay, L. Skinner, M. W. Reeves, E. S. K. Smalley, D. L. McCawley, Charles C. World, H. E. Harwick, J. P. Wilson, J. B. Varner, S. Atteberry, Alexander Gregory, William Wood, Joseph Taylor, James Taylor, D. M. Wallace, G. Gilliard, John W. Atteberry, J. G. Foster, John Curry, Lavina Sumpter, J. Skelton, J. C. Chaffman, B. F. Chaffman, L. C. Coffman, B. F. Coffman, John S. Lusk, John S. Johnson, Welcome Compton, John W. Hilliard, Andrew Bleakley, George Pepperworth, Levi Garrison, Levi Garriss, the Ætna Insurance Company, who are all citizens of the State of Illinois.

And thereupon your orators complain and say that previously to the 26th day of April, A. D. 1859, the county of Wayne, Illinois, was the owner by title in fee simple of one hundred thousand acres of land, or thereabouts, situate and being in said Wayne county, that on said latter date said county made a trust deed and
92 also a mortgage to one Isaac Seymour, as trustee of said lands, to secure payment of $800,000 in amount of construction bonds of the Mount Vernon Railroad Company; that default having been made in payment of said bonds a suit to foreclose said trust deed and mortgage was instituted in this court, on the chancery side thereof, on March 7th, 1865, the plaintiffs therein being John W. Kennicott *et als.* and the defendants therein being The Mount

Vernon Railroad Company and Wayne County aforesaid; that on the 25th day of June, A. D. 1874, or thereabouts, a decree was rendered in this court in said cause for the sale under foreclosure of said lands or a sufficient quantity thereof to pay said indebtedness, and that in pursuance of said decree of foreclosure the lands embraced in said trust deed and mortgage were, by the master in chancery of said court, on the 18th day of September, A. D. 1877, sold at public auction in pursuance of and in the manner and time authorized by said decree of foreclosure, and that all of said lands were at said sale purchased by the following-named persons, to wit:

Isaac Taylor, Richard P. Glenn, Stephen A. Goodwin, Nor-
93 man M. Broadwell, and Samuel J. Crooks, as trustees for the beneficial owners of the amount secured to be paid in and by said decree, that a redemption of one year was allowed to the mortgagor or its assigns in and by said decree, and that none of said lands were redeemed or attempted to be, and that the master's sale became absolute; also that said trustees at said master's sale, for a valuable consideration, assigned and transferred their certificate of purchase to Norman M. Broadwell, and that upon the proper request of said Broadwell the said master in chancery, viz., John H. Jones, Esquire, did, on May 27th, 1879, or thereabouts, make, execute, and deliver unto the said Norman M. Broadwell a master's deed to all of said lands, which deed was recorded in Book 38, at page 297, of Wayne county records; and that afterwards by various mesne conveyances the following-described tracts, being a portion of said lands so included in said trust deed and mortgage and decree of foreclosure and master's certificate of purchase and master's deed, were vested in and are now the property of the

94 said Elizabeth H. Taylor, viz: N. E. ¼ of N. E. ¼ of 13, T. 2 S., R. 6 E.; N. E. ¼ of S. W. ¼ of sec. 22, T. 1 S., R. 5 E.; N. W. ¼ of N. W. ¼ of sec. 22; N. E. ¼ of S. E. ¼, sec. 22; S. E. ¼ of N. E. ¼ of sec. 35, all in T. 1 S., R. 5 E.; N. E. ¼ of N. W. ¼, sec. 11; N. E. ¼ of N. E. ¼ of sec. 12; N. E. ¼ of S. W. ¼, sec. 28, all in T. 2 S., R. 5 E.; N. E. ¼ of S. E. ¼, sec. 10; N. W. ¼ of S. E. ¼, sec. 19; N. ½ of N. W. ¼ and N. E. ¼, sec. 36, all in T. 2 S., R. 6 E.; N. W. ¼ of S. E. ¼, sec. 2; S. E. ¼ of sec. 3; N. E. ¼ of S. E. ¼, sec. 9; S. E. ¼, sec. 12, all in T. 3 S., R. 7 E.; W. ½ of S. E. ¼, sec. 7, T. 3 S., R. 8 E; S. W. ¼ of S. E. ¼, sec. 13; N. E. ¼ of S. E. ¼, sec. 17; N. W. ¼ of N. E. ¼ and W. ½ of N. W. ¼, sec. 25; S. E. ¼ of N. E. ¼ and S. W. ¼ of N. W. ¼ of sec. 26; N. E. ¼ of S. E. ¼ of sec. 34; N. ½ of S. W. ¼, sec. 36, all in T. 1 S., R. 9 E.; whole of section twelve, T. 3 S., R. 9 E.; S. E. ¼ of N. E. ¼, sec. 28, T. 1 N., R. 8 E.; S. W. ¼ of N. W ¼ of sec. 1, in T. 1 N., R. 9 E., and N. E. ¼ of S. E. ¼, sec. 28, T. 2 N., R. 9 E.; and that the following-described tracts, being another portion of the lands so included in said trust deed and mortgage and decree of foreclosure and master's certificate of purchase and master's deed, were vested in and are now the property of Henry M.

Alexander, executor as aforesaid, viz: E. ½ of N. E. ¼, sec. 14;
95 S. E. ¼ of S. W. ¼, sec. 19; N. E. ¼ of N. E. ¼, sec. 25, all in T. 2 S., R. 6 E.; and that the following-described tracts, being likewise a portion of the same lands, were vested in and are now the

property of Joseph Waxelbaum, viz: N. W. ¼ of S. W. ¼ and N. E. ¼ of S. W. ¼ of sec. 25, T. 1 S., R. 9 E.; and that the following-described tracts, being also a portion of the same lands, have been vested in and are now the property of William L. Rolston, viz: S. W. ¼ of S. W. ¼, sec. 8, T. 1 N., R. 8 E.; N. E. ¼ of S. W. ¼, sec. 4, T. 1 S., R. 8 E.; and that the following, being also a portion of the said tracts of land, have been vested in and are now the property of Charles A. Coe, viz: N. W. ¼, sec. 34; S. W. ¼ of N. E. ¼, sec. 35, all in T. 1 N., R. 8 E.; N. E. ¼ of N. W. ¼ and W. ½ of N. W. ¼, sec. 5, T. 1 S., R. 8 E.; S. W. ¼ of S. E. ¼, sec. 7, T. 3 S., R. 9 E.; and that the following, being another tract of said land, has been vested in and is now the property of Arthur F. Gould, viz: S. W. ¼ of S. W., sec. 26, T. 1 N., R. 9; and that the following tract, being another of said tracts, belongs to the said Arthur F. Gould and J. Sargent Smith jointly, viz: S. W. ¼ of S. W. ¼, sec. 14, T. 1 N., R. 9 E.

96 And your orators, further complaining, would further show that after the said county of Wayne had thus executed said trust deed and mortgage and before any proceedings to foreclose the same had been commenced in any court or otherwise the said county of Wayne, by competent and legal authority, sold and conveyed its equity of redemption of, in, and to said above-described tracts of lands to divers and sundry persons, and that in some cases such purchasers still retain said title, and in other of said cases said title has been transferred, so that the holders and owners of said equity of redemption of, in, and to said several tracts of land are severally as follows, viz:

N. E. ¼ of N. E. ¼ of sec. 13, T. 2 S., R. 6 E., I. W. Atkinson.
N. E. ¼ of S. W. ¼ of sec. 22, T. 1 S., R. 5 E., M. E. Bozarth.
N. W. ¼ of N. W. ¼ of sec. 22, " I. B. Bozarth.
N. E. ¼ of S. E. ¼ " 22, " Caleb Peddicord.
S. E. ¼ of N. E. ¼ of sec. 35, T. 1 S., R. 5 E., Micajah Dalton.
N. E. ¼ of N. W. ¼ " 11, T. 2 S., R. 5 E., I. Ellis.
N. E. ¼ of N. E. ¼ " 12, " A. Bowen.
N. E. ¼ of S. W. ¼ " 28, " John Payne.
N. E. ¼ of S. E. ¼ " 10, T. 2 S., R. 6 E., John Bain.
N. E. ¼ of N. E. ¼ " 14, " Micheal Book.
S. E. ¼ of N. E. ¼ " 14, " Elizabeth Smoke.
S. E. ¼ of S. W. ¼ " 19, " Wm. A. Dobbs and the Ætna Fire Insurance Company.

97 N. W. ¼ of S. E. ¼ of sec. 19, T. 2 S., R. 6 E., Wm. Garrison and J. B. Scudamore.
N. E. ¼ of N. E. ¼ of sec. 25, T. 2 S., R. 6 E., W. S. Ellis.
N. ½ of N. E. ¼ of sec. 36, " L. J. Ryder and L. Richards.
S. ½ of N. E. ¼ of sec. 36, T. 2 S., R. 6 E., Arch Bean.
N. ½ of N. W. ¼ of sec. 36, " C. M. Wakefield.
N. W. ¼ of S. E. ¼ of sec. 2, T. 3 S., R. 7 E., Stephen J. Renfro.
E. ½ of S. E. ¼ of sec. 3, " Wm. Shaeffer.
W. ½ of S. E. ¼ of sec. 3, " E. T. Hall.
N. ½ of S. E. ¼ of sec. 12, " Hiram Tucker.
S. W. ¼ of S. E. ¼ of sec. 12, " Stephen Renfro.
S. E. ¼ of S. E. ¼ of sec. 12, " T. J. Prickett.

S. W. ¼ of S. E. ¼ of sec. 13, T. 1 S., R. 9 E., Cyrus Oakley and W. J. Asa.

N. E. ¼ of S. E. ¼ of sec. 17, T. 1 S., R. 9 E., unknown heirs of Mary A. Owen.

N. W. ¼ of N. E. ¼ of sec. 25, T. 1. S., R. 9 E., George Pepperworth, Levi Garris, and Levi Garrison & Sam'l Booth.

W. ½ of N. W. ¼, sec. 25, T. 1 S., R. 9 E., H. S. Thompson, S. Thompson, and —— Harris.

S. E. ¼ of N. E. ¼, sec. 26, T. 1 S., R. 9 E., Wm. Comsay and Wm. Gravitt.

N. E. ¼ of S. E. ¼, sec. 34, T. 1 S., R. 9 E., —— St. Leger.

N. ½, sec. 12, T. 3 S., R. 9 E., D. L. McCawley.

N. ½ S. W. ¼; sec. 12, " D. L. McCawley.

S. ½ S. W. ¼ " " E. S. K. Smalley.

S. E. ¼, " " E. S. K. Smalley.

98 N. ½ N. W. ¼, 12, T. 3 S., R. — E., M. W. Reeves.

S. E. ¼ of N. E., 28, T. 1 N., R. 8, Chas. C. World.

N. E. ¼ of S. W. ¼, 25, T. 1 S., R. 9, Albert Simms.

N. W. ¼ of S. W., 25, " D. McNibbin.

S. W. ¼ of S. W., 8, T. 1 N., R. 8 E., J. W. Atteberry.

N. E. ¼ of S. W., 4, T. 1 S., R. 8 E., J. G. Foster.

N. W., 34, T. 1 N., R. 8 E., L. C. Coffman, B. F. Coffman, I. C. Chaffman, & B. F. Chaffman.

S. W. ¼ of N. E. ¼, sec. 25, T. 1 N., R. 8 E., John S. Lusk.

N. E. ¼ of N. W. ¼, sec. 5, T. 1 S., R. 8 E., John Curry.

W. ½ of N. W. ¼, sec. 5, T. 1 S., R. 8 E., Lavina Lumpter.

S. W. ¼ of S. E. ¼ of sec. 7, T. 3 S., R. 9 E., John S. Johnson.

S. W. ¼ of S. W. ¼ of sec. 26, T. 1 N., R. 9 E., Andrew Bleakley.

S. W. ¼ of S. W. ¼ of sec. 14, " Welcome Compton.

N. E. ¼ of S. E. ¼ of sec. 9, T. 3 S., R. 7 E., A. S. Winters.

N. ½ of S. W. ¼ of sec. 36, T. 1 S., R. 9 E., heirs of Wm. Walker.

W. ½ of S. E. ¼ of sec. 7, T. 3 S., R. 8 E., I. K. Palmer.

S. W. ¼ of N. W. ¼ of sec. 1, T. 1 N., R. 9 E., H. E. Harwich.

N. E. ¼ of S. E. ¼ of sec. 28, T. 2 N., R. 9 E., I. P. Wilson.

And your orators, further complaining, would show unto your honors that in said suit to so foreclose the said trust deed and mortgage no one of the parties who thus purchased the above-mentioned lands from the said county of Wayne subsequently to the execution of said mortgage and prior to the commencement of said
99 proceedings to foreclose, nor their assigns, in any degree were made parties to said suit, but that said suit was instituted and conducted through all its stages to a decree with the Mt. Vernon R. R. Company and the said county of Wayne as the sole party defendants; and your orator avers that as a matter of law the various of said parties who are now owners of said equity of redemption have the right to redeem the said various parcels of land from under said decree, and in default thereof to be barred of their several and respective rights of redemption.

And your orators would further show unto your honors that all of the lands so embraced in said trust deed and mortgage were sold in separate parcels, and that the entire aggregate of bids for the

said several parcels realized only $55\frac{26}{100}$ per cent. of the mortgage debt, leaving yet due and outstanding as said debt the percentage of $44\frac{74}{100}$ per cent. yet due and unpaid, together with interest thereon from said September 18, 1877, at the rate of six per centum per annum, and they state further that the total amount
100 after decree in said cause was $—, and that the total aggregation of the bids was $—, leaving yet due and unpaid the sum of $—.

And your orators would further show unto your honors that the amounts realized, in detail, from the sales of the above-described tracts of land were as follows, viz:

N. E. ¼ of N. E. ¼ of	sec.	13,	T. 2 S.,	R. 6 E.		$240	
N. E. ¼ of S. W. ¼	"	22,	T. 1 S.,	R. 5 E.		280	
N. W. ¼ of N. W. ¼	"	22,	"	"		240	
N. E. ¼ of S. E. ¼	"	22,	"	"		320	
S. E. ¼ of N. E. ¼	"	35,	"	"		360	
N. E. ¼ of N. W. ¼	"	11,	T. 2 S.,	R. 5 E.		240	
N. E. ¼ of N. E. ¼	"	12,	"	"		480	
N. E. ¼ of S. W. ¼	"	28,	"	"		480	
N. E. ¼ of S. E. ¼	"	10,	T. 2 S.,	R. 6 E.		440	
N. E. ¼ of N. E. ¼	"	14,	"	"		240	
S. E. ¼ of N. E. ¼	"	"	"	"		240	
S. E. ¼ of S. W. ¼	"	19,	"	"		260	
N. W. ¼ of S. E. ¼	"	19,	"	"		360	
N. E. ¼ of N. E. ¼	"	25,	"	"		240	
N. ½ of N. E. ¼	"	36,	"	"		480	
S. ½ of N. E. ¼	"	36,	"	"		480	
N. ½ of N. W. ¼	"	36,	"	"		480	
N. W. ¼ of S. E. ¼	"	2,	T. 3 S.,	R. 7 E.		480	
E. ½ of S. E. ¼	"	3,	"	"		560	
W. ½ of S. E. ¼	"	3,	"	"		560	
101 N. ½ of S. E. ¼	sec.	12,	T. 3 S.,	R. 7 E.		480	00
S. W. ¼ of S. E. ¼	sec	"	"	"		240	00
S. E. ¼ of S. E. ¼	sec.	"	"	"		240	00
S. W. ¼ of S. E. ¼	"	13,	T. 1 S.,	R. 9 E.		720	00
N. E. ¼ of S. E. ¼	"	17,	"	"		680	00
N. W. ¼ of N. E. ¼	"	25,	"	"		240	00
S. E. ¼ of N. E. ¼	"	26,	"	"		240	00
S. W. ¼ of N. W. ¼	"	"	"	"		240	00
N. E. ¼ of S. E. ¼	"	34,	"	"		240	00
N. ½	"	12,	3 S.,	R. 9		1,280	00
N. ½ of S. W. ¼	"	12,	"			320	00
S. ½ of S. W. ¼	"	12,	"			320	00
S. E. ¼	"	12,	"			640	00
W. ½ N. W. ¼ of N. W. ¼	sec.	12,	3 S.,	R. 9		80	00
S. E. ¼ of N. E. ¼	sec.	28,	T. 1 N.,	R. 8 E.		240	00
N. E. ¼ of S. W. ¼	"	25,	T. 1 S.,	R. 9 E.		120	00
N. W. ¼ of S. W. ¼	"	25,	T. 1 S.,	R. 9 E.		120	00
S. W. ¼ of S. W. ¼	"	8,	T. 1 N.,	R. 8 E.		160	00
N. E. ¼ of S. W. ¼	"	4,	T. 1 S.,	R. 8 E.		288	00

N. W. ¼	"	34, T. 1 N., R. 8 E.	960 00
S. W. ¼ of N. E. ¼	"	35, " "	400 00
N. E. ¼ of N. W. ¼	"	5, T. 1 S., R. 8 E.	160 00
W. ½ of N. W. ¼	"	5, " "	320 00
S. W. ¼ of S. E. ¼	"	7, T. 3 S., R. 9 E.	240 00
S. W. ¼ of S. W. ¼	"	26, T. 1 N., R. 9 E.	240 00
S. W. ¼ of S. W. ¼	"	14, " "	260 00
W. ½ of N. W. ¼	"	25, T. 1 S., R. 9 E.	480 00

102 And your orators set forth and exhibit herein and pray to be taken as part of this bill of complaint a copy of said trust deed, marked Exhibit "A," and also a copy of the mortgage aforesaid, marked Exhibit "B," which they pray may be taken as part hereof.

Forasmuch, therefore, as your orators are without remedy in the premises except in a court of equity, and to the end that the said I. B. Bozarth, M. E. Bozarth, Caleb Peddicord, L. J. Bronsen, Micajah Dalton, J. Ellis, A. Bowen, John Payne, John Bain, T. F. Bain, J. W. Atkinson, Micheal Book, Elizabeth Smoke, The Ætna Fire Insurance Company, William A. Dobbs, William Garrison, J. B. Scudamore, W. S. Ellis, L. J. Rider, L. Richards, Arch. Bean, C. M. Wakefield, Stephen J. Renfro, William Shaeffer, E. T. Hall, A. Winters, Hiram Tucker, Stephen Renfro, T. J. Pirchett, J. K. Palmer, H. S. Thompson, L. Thompson, William Gravitt, William Comsay, L. Skinner, S. Kinner, D. L. McCawley, M. W. Reeves, E. L. K. Smalley, Charles C. World, H. E. Harnich, J. P. Wilson, J. B. Varner, L. Atteberry, Alexander Gregory, William Wood, Joseph
103 Taylor, James Taylor, D. M. Wallace, G. Gilliard, John W. Atteberry, J. G. Foster, John Curry, Lavina Lumpter, J. Skelton, J. C. Chaffman, B. F. Chaffman, L. C. Coffman, B. F. Coffman, John S. Lusk, John S. Johnson, Welcome Compton, James W. Hilliard, Andrew Bleakley, George Pepperworth, Levi Garrison, Levi Garris, D. McNibbin, Cyrus Oakley, W. J. Asa, Albert Simms, unknown heirs of Thomas St. Leger, unknown heirs of Wm. Walker, and unknown heirs of Mary A. Owen, and that when the names are known your orators pray may be made parties by special designation, who are made parties defendant to this bill, may be required to make full and perfect answer to the same, but not under oath, the answer under oath being hereby waived, and that it may be declared that your orators, as such assigns of Isaac Taylor, Richard P. Glenn, Stephen A. Goodwin, Norman M. Broadwell, and Samuel J. Crooks, are entitled to have the benefit of said original decree of foreclosure, and that for that purpose this bill may be taken as supplemental to the said bill in case of Kennicott *et als. vs.* Board of Supervisors of Wayne County *et als.*, and that your orators may, respectively, have the same relief against
104 the defendants as the plaintiffs in the said original suit might have had had they been made parties to the original suit, and that an account may be taken in this behalf by or under the direction of this honorable court; that the defendants may severally be decreed to pay your orators, respectively, the several amounts found

due as having been the several and respective amounts of purchase-money for said several tracts of land so sold at said master's sale, together with the costs of this suit, by a day to be appointed by the court for that purpose, or, in default thereof on the part of any of said parties, that each of said parties so making default and all persons claiming under them may be absolutly and forever debarred and foreclosed of and from all right and equity of redemption in or to the said mortgaged premises and every part thereof, and that the said several parties so foreclosed may deliver up to your orators all deeds, papers, writings, and documents in their possession or power relating to or concerning said mortgaged premises or any part thereof, or, in the alternative, that an account may be taken
105 by and under direction of this honorable court what amount remains due under said mortgage, and that payment thereof may be made within a short day to be fixed for that purpose, and that in default of such payment the said mortgaged premises may be sold as the court shall direct to satisfy such debt and costs; that in case of such sale and a failure to redeem therefrom pursuant to the statute the defendants and all persons claiming through or under them after the commencement of this suit may be forever barred and foreclosed of all right or equity of redemption of the said mortgaged property, and that your orators may have such other and further relief as the equity of the case may require—

May it please your honors to grant the writ of summons in chancery, directed to the marshal of this district, commanding him that he summon the said defendants to appear before the said court on the next succeding rule day hereafter, then and there to answer, but without oath as aforesaid, &c.

106 ELIZABETH H. TAYLOR,
HENRY M. ALEXANDER,
Surviving Executor of Peter McMartin,
WILLIAM L. ROLSTON,
JOSEPH WAXELBAUM,
CHARLES A. COE,
J. SARGENT SMITH,
ARTHUR F. GOULD,
By H. C. WHITNEY, *Their Sol.*

HENRY C. WHITNEY,
Solicitor for Compl'ts.

(Endorsed:) Filed January 26, 1882. J. A. Jones, clerk.

And afterwards, to wit, on the 28th day of January, in the year last aforesaid (A. D. 1882), came the complainants, by their said solicitor, and filed in said clerk's office their motion to dismiss as to certain defendants in said cause; which said motion is in the words and figures following, to wit:

Motion to Dismiss as to Certain Def'ts.

In the United States Circuit Court within and for the Southern District of Illinois.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.*
} In Chancery.

107 The said complainants now here come and move the court to dismiss this suit as to the following-named persons, named as defendants, viz., John Payne, Albert Simms, J. Ellis, Martin E. Bozarth, John W. Atteberry, J. G. Foster, J. B. Bozarth, S. J. Branson, J. B. Varner, T. Atteberry, Alexander Gregory, Wm. Wood, Joseph Taylor, James Taylor, D. M. Wallace, G. Gilliard, S. Skinner, and T. Skinner, and likewise to release from the lien and operation of said proceedings the following-described tracts of land, viz:

N. E. ¼ of S. W. ¼, sec. 25, T. 1 S., R. 9 E.
N. E. ¼ of S. W. ¼, " 28, T. 2 S., R. 5 E.
N. E. ¼ of N. W. ¼, " 11, T. 2 S., R. 5 E.
N. E. ¼ of S. W. ¼, " 22, T. 1 S., R. 5 E.
N. W. ¼ of S. W. ¼, " 8, T. 1 N., R. 8 E.
N. E. ¼ of S. W. ¼, " 4, T. 1 S., R. 8 E.
N. W. ¼ of N. W. ¼, " 22, T. 1 S., R. 5 E.

HENRY C. WHITNEY,
Sol'r for Complainants.

(Endorsed:) Filed January 28, 1882. J. A. Jones, clerk.

108 And also upon the same day and year last aforesaid (Saturday, January, 28, 1882), at the January term of said court, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Dismissing as to Certain Def'ts.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.*
} T. No. 206, 6309. In Chancery.

On motion of complainants, by H. C. Whitney, Esq., their solicitor, this cause is dismissed as to the defendants John Payne, Albert Simms, J. Ellis, Martin E. Bozarth, John W. Atteberry, J. G. Foster, J. B. Bozarth, S. J. Branson, J. B. Varner, T. Atteberry, Alexander Gregory, William Wood, Joseph Taylor, James Taylor, D. M. Wallace, G. Gilliard, S. Skinner, and T. Skinner.

And thereupon, to wit, on the same day and year last aforesaid, to wit, January 28th, 1882, a chancery subpœna was issued out of said clerk's office, directed to the marshal of said district to execute;

109 which said chancery subpœna and the return of the marshal thereto is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to Caleb Peddicord, Micajah Dalton, A. B. Owen, John Bain, T. F. Bain, J. W. Atkinson, Michael Book, Elizabeth Smoke, The Ætna Fire Insurance Company, William A. Dobbs, William Garrison, J. B. Scudamore, W. S. Ellis, L. J. Rider, L. Richards, Arch. Bean, C. M. Wakefield, Stephen J. Renfra, William Shaeffer, E. T. Hall, A. Winters, Hiram Tucker, Stephen Renfra, T. J. Puckett, J. K. Palmer, H. S. Thompson, T. Thompson, William Gravitt, William Coursay, D. L. McCawley, M. W. Reeves, E. S. K. Smalley, Charles C. World, H. E. Hannick, J. P. Wilson, John Curry, Lavina Sumpter, J. Skelton, J. C. Chaffman, B. F. Chaffman, L. C. Coffman, B. F. Coffman, John S. Lusk, John S. Johnson, Welcome Compton, James W. Hilliard, Andrew Bleakley, George Pepperworth, Levi Garrison, Levi Garris, D. McKebbin, Cyrus Oakley, W. Jasa, unknown heirs of Thomas St. Leger, unknown heirs of William Walker, and unknown heirs of Mary A. Owen, Greeting:

We command you and every of you that you appear be-
110 fore our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of March next, to answer the bill of complaint of Elizabeth H. Taylor, Henry M. Alexander, as surviving executor of the last will and testament of Peter McMartin, deceased; William L. Rolston, Joseph Waxelbaum, Charles A. Coe, J. Sargent Smith, Arthur F. Gould, heretofore, to wit, on the 26th January, 1882, filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-eighth day of January, in the year of our
[SEAL] Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth year.

J. A. JONES, *Clerk.*

111 *Memorandum.*

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable the complainants' bill will be taken against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

(*Marshal's Return.*)

I hereby appoint Nick S. McCown my special deputy to execute this writ.

Feb'y 1, 1882.

JACOB WHEELER, *U. S. M.*

I have served the annexed writ on the persons therein named in the following manner, to wit:

Upon Hiram Tucker, Feb. 6th, 1882; upon Michael Book, Elizabeth Smoke, & A. Winters, Feb. 7th, 1882; upon John Bain, J. W. Hilliard, & Micajah Dalton, Feb. 10th, 1882; upon Caleb Peddicord & Wm. Shaeffer, Feb. 11th, 1882; upon D. L. McCawley, Feb. 13th, 1882; upon Sarah J. St. Leger, William St. Leger, & Harrison St. Leger, heirs of Thos. St. Leger; E. T. Hall, & L. J. Rider, Feb. 14th, 1882; upon Lavina Sumpter, M'ch 1st, 1882;
112 upon Welcome Compton, M'ch 2d, 1882, by personally delivering to each of them a true copy of the same on the aforesaid days.

I also served the same upon the following-named defendants, not having been able to find them to serve personally, by leaving a true copy thereof for each of them at their usual place of abode with a person above the age of ten years and a member of their respective families, and to whom the contents were made known by me, to wit:

Upon Stephen J. Renfra Feb. 6th, 1882; upon Thos. F. Bain & J. W. Atkinson Feb. 10th, 1882; upon Wm. Garrison Feb. 11th, 1882; upon Andrew Bleakley & John E. St. Leger & Emma St. Leger, heirs of Thos. St. Leger, Feb. 14th, 1882; J. Skelton M'ch 2nd, 1882.

The following-named defendants cannot be found in my district: Arch. Bean, Levi Garris, heirs of M. A. Owens, L. Richards, W. S. Ellis, D. McKibbon, John Curry, J. K. Palmer, W. A. Dobbs, Cyrus Oakley, T. J. Puckett, Wm. Gravitt, J. P. Wilson, A. B. Owen, H. E. Harmick, Wm. Coursay, Geo. Pepperworth, Chas. C. World, John S. Lusk, M. W. Reeves, L. C. Coffman, B. F. Coffman, John S. Johnson, W. Jasa, & heirs of Wm. Walker.

JACOB WHEELER, *U. S. M.*,
By NICK S. McCOWN, *Sp'l Deputy.*

(Endorsed:) Filed March 8, A. D. 1882. J. A. Jones, clerk.

113 And afterwards, to wit, on Wednesday, the 2d day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-four, the following order consolidating said causes was made by said court and entered of record, towit:

Order Consolidating Causes.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 131, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } T. No. 132, 6307. In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } T. No. 133, 6308. In Chancery.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.* } T. No. 134, 6309. In Chancery.

On motion of Henry C. Whitney, solicitor in the last of said above cases, it is by the court ordered that all four of said above-
114 named causes shall be, and they are hereby, consolidated, and shall hereafter progress as one cause, under the title of the first cause, and that general leave is given to amend bills in all of said causes to make the same harmonious.

And afterwards, to wit, on Friday, the 4th day of April, at the term of court and in the year last aforesaid, the following further order was made by said court and entered of record in said consolidated cause, to wit:

Order Allowing Fernando B. Hane to File Petition.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.* } T. No. 123, 6309. In Chancery.

In the matter of the intervening petition of Fernando B. Hane.

On motion of Fernando B. Hane, by Walter B. Scates, Esq., his solicitor, leave is granted to file an intervening petition herein.

And thereupon, to wit, on the day last aforesaid (April 4th, 1884), came Fernando B. Hane, by his solicitor, and filed in said
115 clerk's office his bond for costs, intervening petition, and exhibits to said petition; which are in the words and figures following to wit:

Cost Bond on Petition of Fern. B. Hane.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

Circuit Court. June Term, A. D. 1884.

ELIZABETH H. TAYLOR *v.* JOHN W. ATTEBERRY *et al.* } In Chancery.

Intervening petition in said cause by Fernando B. Hane.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and, in default of payment by the defendants of any costs ordered or adjudged to be paid by complainant, hereby agree and stipulate that execution may issue against said complainant's property for any costs taxed against him.

Dated this fourth day of April, A. D. 1884.

J. S. MECKLING.
MICHAEL TRAVER.

(Endorsed:) Filed April 4, A. D. 1884. J. A. Jones, clerk.

116 *Petition for Leave to File Intervening Petition of Fernando B. Hane.*

In the Circuit Court of the United States for the Southern District of Illinois.

ELIZABETH H. TAYLOR *vs.* JOHN W. ATTEBERRY *et al.* } In Chancery. Bill to Reforeclosure.

To the honorable judges of said court:

Your petitioner, Fernand B. Hane, a citizen of the State of Ohio, respectfully shows that he is the owner by title in fee of a large quantity of lands embraced in the mortgage and trust deed referred to in the bill in the above suit, and that his rights under said mortgage & trust deed are precisely the same as the rights of the above-named complainant.

He further shows that other and different persons from those impleaded by said complainant or by those in the general suits consolidated with the above claim the several tracts of land belonging to your petitioner.

Wherefore petitioner prays leave to file an intervening petition in this suit (so consolidated) and to implead the claimants to
117 the land so owned by your petitioner as defendants to this proceeding, and for leave to join in the adjudication and fur-

ther proceedings hereunder on such terms, as to costs and otherwise, as the court may impose, &c.

And your petitioner will ever pray, etc.

WALTER B. SCATES,
Solicitor for Petitioner.

WALTER B. SCATES, *Of Counsel.*

Intervening Petition of Fernando B. Hane.

In the Circuit Court of the United States for the Southern District of Illinois.

ELIZABETH H. TAYLOR
vs.
JOHN W. ATTEBERRY and Others. } In Chancery. Bill to Foreclose Intervening Petition.

Fernando B. Hane, a citizen of the State of Ohio, brings this his intervening petition against all the defendants hitherto impleaded in the above suit and other suit- consolidated therewith by order of this court made and entered of record on January 3d, 1884, and also against the following other persons, citizens of the State of Illinois, and whom your petitioner prays may be made parties de-
118 fendants hereto, viz: John J. Backman, John W. Kindle, John C. Bestow, Edward Bonham, Charles A. Beacher, R. L. Lambert, George Johnson, Leander Karn, Conrad Karn, Calvin Keston, L. C. Kaufman, J. T. Kaufman, Lucinda Sanders, Malinda Sanders, Ætna Life Insurance Company, James R. Bain, B. Stevens, F. Stevens, Sarah Wilkenson, John Pykert, John R. Murphy, David B. Harlan, Alyshus Winters, Lewis J. Ryder, Alexis Ryder, Francis B. Merrill, Hiram Tucker, —— McKenzie, W. M. McRunnels, James A. Boyd, Lavina Sumpter, Robley D. Adams, Jane Ridgway, Allen Cope, Wm. Robertson, Valentine C. Borah, Wm. N. Borah, John W. Johnson, Maria Harlan, and Benjamin S. Meeks, administrator; Charles Sibley, Reuben Meeks, Reuben G. Meeks, Joseph Odell, Jr., George F. Pyket, Benjamin S. Meeks, James P. Brockway, Edward Brockway, William Law, Samuel C. Pendleton, Erasmus W. Pendleton, James K. Parmer, Jasper Partridge, Wm. A. Atteberry, Eliza C. Yosinger, Henry Freland, Thomas Behmyer, Wm. White, Robert T. Wilkenson; Wm. Smith, Thomas M. Say, Van R. Price, Wm. F. Spitler, James W. Calvin, Richard Campbell, Anderson Wall, Sterling M. Hill,
119 Lyman E. McPettridge, James Simms, Charles Wood, James Crews, F. W. Tracey, Samuel A. Skinner, Wilkenson Brock, F. A. West, Samuel Booth, John L. Wagner, Wiley Hooper, Henry Washburn, James M. Harris, John Haeflele, Thomas J. Clarke, James Strowman, Landon C. Kelly, John R. Odell, James M. Kelly, John Stanley, John Odell, John Johnson, Isaac Crumbacher, Gilbert J. George, Henry G. Wheeler, Wm. Carson, Oliver P. Murphy, Jonathan Mills, Abner Cox, Wm. Rhode, J. C. Weaver, Hugh M. Sanderson, First National Bank of Olney, Illinois, J. H. Travis, Elias

Cook, Wm. M. Branson, John W. Anderson, Aaron G. Clowd, A. W. Bruce, Jesse W. Clark, N. W. Harvey, Mary Ellis, Adaline Ellis, John J. Farmer, Martin M. Wheeler, Josiah C. Slaton, E. Constable, George W. Draper, Wm. Mabry, Louise J. Woody, Francis M. Fitch, Michael Arnold, Susan Pharr, Elias Free, John Harper, John Wade, Miles Griffin, A. P. Harris, Marshal Pool, Augusta Townsend, Ellen P. Peeples, Mary P. Docker, Samuel Thomas, J. Hunsinger, Wm. Richardson, George W. Odell, M. J. Dickenson, Wm. Britton, Milton Cravens, Daniel L. McCawley, John Funkhouser, Wm. H. Daniel, Nathan Veasey, Elizabeth Kelly,
120 R. H. Prickett, H. Kincart, Sarah St. Leger, Theodore H. Hadley, Michael Hiller, J. B. Borah, James Merrick, Joseph Rogers, Geo. Fishell, James W. Bell, Emeline Austermann, Wm. J. Austermann, Sarah Austermann, John J. Austermann, Larilda Austermann, Anton Austermann, Adam Austermann, Elizabeth Laster, Marion Laster, Andrew Martin, James Martin, Robert T. Forth, Isaac Garretson, William Keen, Jonathan Bozarth, Sarah Bane, Wm. H. Grant, B. F. Means, R. N. Puckett, Alfred Orr, Wm. Conway, M. F. Whitney, Matilda J. Skinner, Miles Moore; and thereupon your intervening petitioner complains and says that he, your intervening petitioner, is the owner, by title, in fee simple absolute of a large portion of the lands in the said bill in the suit of said Elizabeth H. Taylor, specified as having been acquired by Norman M. Broadwell, having become the owner thereof in good faith for a valuable consideration through certain mesne conveyances from said Broadwell to your intervening petitioner, and which are described and set forth in a schedule marked Z, hereto annexed, in which said tracts are
121 set forth in the first three columns thereof, marked 1, and made part hereof.

And your intervening petitioner further shows that after the county of Wayne had executed its trust deed and mortgage, and before any proceedings to foreclose the same had been commenced in any court or otherwise, said county of Wayne, by competent and legal authority, sold and conveyed its equity of redemption to said lands, and that in some cases purchasers still retain said title, and in other of said cases said title has been transferred, so that the present holders of said equity of redemption of, in, and to said several tracts of land — as severally shown in said Schedule Z, hereunto annexed, and said claimants are marked Exhibit 2 and made part hereof, it being the last column in said schedule.

And your intervening petitioner would show that in said suit to so foreclose the said trust deed and mortgage no one of the parties who then purchased any of said lands mentioned in Exhibit 1 in said Schedule Z from said county of Wayne, subsequently to the execution of said mortgage and prior to the commencement
122 of said proceedings to foreclose, nor their assigns, in any degree were made parties to said suit, but that said suit was instituted and conducted through all its stages to a decree with Wayne county as the sole defendant; and your intervening petitioner avers as matter of law that all of said parties who are now owners respectively of said equity of redemption have the right to redeem the

various parcels of land from under said decree, but in default thereof to be barred of their several and respective rights of redemption.

And your intervening petitioner would further show unto your honors that all of the lands so embraced in said trust deed and mortgage were sold in separate parcels, and that the entire aggregation of bids for the said several parcels realized only $55\frac{26}{100}$ per cent. of the mortgage debt, leaving yet due and outstanding the percentage of $44\frac{74}{100}$ per cent. yet due and unpaid, together with interest thereon from said September, 18, 1877, at the rate of six per cent. per annum.

123 And your intervening petitioner would further show that the amounts realized in detail from sales of the above-described tracts of land at said foreclosure — were as set forth in said Schedule Z, hereto annexed, marked Exhibit 3, and made part hereof, it being the fourth column in said schedule.

And your intervening petitioner would further show that several of the said parties so claiming the equity of redemption by purchase, either directly or through mesne conveyances, from said county of Wayne to their respective tracts of land, being part of those above-mentioned tracts, have severally heretofore caused suits in equity to be brought against your petitioner's vendors in the circuit court of Wayne county, Illinois, in which suits severally it was and is claimed that the said mortgage and trust deed were and each of them was invalid, and that the same was without binding force, and that they and each of said parties had a right to demand of the court that the decree of foreclosure which had been rendered by this honorable court, as stated

124 and set forth in the bill filed herein, should be annulled, vacated, and held for naught by decree of said circuit court of Wayne county as to said several tracts thus embraced in said several suits; and your intervening petitioner annexes hereto and prays to be taken as a part hereof a list of lands to which suits have been thus brought and are thus pending, together with the names severally of the parties complainant, which list is marked Schedule Y and made part hereof.

And your intervening petitioner would show and set forth that the moving cause and vital power behind all of said suits in said circuit court of Wayne county and without which they would not have been brought was the efforts of one H. Tompkins, a counsellor-at-law and a practitioner at the bar of this court, as well as at that of the circuit court of Wayne county; that said Tompkins, in disregard of the duty of a lawyer towards his profession, procured permission of the complainants to institute said suits by persistent importunity, and that said Tompkins threatens, designs, and intends

125 to try all of said suits at the next ensuing term of said circuit court of Wayne county and upon said trial to urge and insist upon the court that said mortgage and trust deed were and are invalid and not binding, nor was the decree therein binding on his clients, the complainants in said suits.

And the said Tompkins further threatens and designs and intends to procure from said circuit court of Wayne county decrees in all of said suits annulling the decree of this court in said original foreclosure suit upon the ground that said mortgage and trust deed

were severally invalid, and that said complainants had the legal right to set up this invalidity in the suits in question.

And your intervening petitioner would further show unto your honors that said Tompkins further expressly threatens to bring similar suits having the same gravamen in behalf of the claimants to other tracts of land included in those belonging to your petitioner, and that said Tompkins designs and intends to annul said decree of foreclosure thus pronounced by this court, so far as all of said tracts of land so involved in suits already thus pending in said cir-
126 cuit court of Wayne county or to be thus brought, as thus threatened, in said court are concerned, and that, unless restrained by injunction of this honorable court, said Tompkins will thus proceed to have said causes heard upon the issues aforesaid and to procure adjudications annulling said decree of foreclosure of this court aforesaid.

Your intervening petitioner states as matter of law, upon advice of counsel and upon belief, that said purchasers from the county of Wayne of the equity of redemption of said several tracts are barred and concluded as privies in estate with said county of Wayne as to the validity of said mortgage and trust deed by the adjudication in favor of said validity in the said foreclosure suit, and that no question is open to said purchasers except the rights to redeem or proof of payment on their parts severally from under said mortgage and trust deed, and that this court ought to interfere by injunction to restrain any injury which was made and adjudged in said foreclosure suit.

And your intervening petitioner annexes hereto as Exhibit
127 4 and makes part hereof a bill in chancery, partly written and partly printed, which was prepared by said Tompkins with a view to use in bringing new suits as aforesaid and also to use in the pending suits *suits* aforesaid as amended bills in the latter cases.

Your intervening petitioner prays that in addition to the defendants heretofore impleaded in this suit that there may be added and included as parties defendant hereto all the parties whose names were mentioned in the commencement hereof as desired defendants, and also the said H. Tompkins heretofore mentioned, and that they may be severally served with proper process to bring them respectively into the court, and that they may severally be compelled to answer this intervening petition and the bill heretofore filed herein, but without oath, the oaths of all said defendants being hereby expressly waived, and that your intervening petitioner may have the same relief against said defendants as plaintiffs in said original suit might have had had these defendants been made parties to
128 the original suit, and that an account may be taken in this behalf by or under direction of this honorable court; that defendants may be decreed to pay severally to your intervening petitioner the several amounts found due as having been the several and respective amounts of purchase-money for said several tracts of land so sold at said master's sale, together with the costs of this suit, by a day to be appointed by this court for that purpose, or,

in default thereof on the part of any of said parties, that each of said parties so making default and all persons claiming under them may be absolutely and forever debarred and foreclosed of and from all right and equity of redemption in or to the said mortgaged premises and every part thereof, and that said several parties so foreclosed may deliver up to your intervening petitioner all deeds, documents, writings, or papers in their possession or power relating to or concerning said mortgaged premises or any part thereof, or, in the alternative, that an account may be taken by and under direction of this honorable court what amount remains due
129 under said mortgage, and that payment thereof may be made within a short day to be named for that purpose, and that in default of such payment said mortgaged premises may be sold, as the court may direct, to satisfy such debt and costs; that in case of such sale and a failure to redeem therefrom pursuant to the statute the defendants and all persons claiming through or under them after the commencement of this suit may be forever barred and foreclosed of all right and equity of redemption of the said mortgaged property.

And that said defendant, H. Tompkins, may be enjoined and restrained, and also all the said defendants who are complainants in the several suits enumerated in Schedule Y may also be restrained and enjoined, from prosecuting any of the suits specified in said schedule until the final hearing of this cause, and at said hearing they severally be permanently restrained and enjoined from so prosecuting the same, and for writs of injunction in accordance with said prayer, and for such other and further relief in the premises as may be in accordance with equity and good conscience.

WALTER B. SCATES,
Solicitor and of Counsel.

130 *Schedule "Y" to Intervening Petition of Fernando B. Hane.*

Alfred Orr *vs.* J. W. Ward, N. E. S. W. 10, 1 S., 9 E., ent'd by Samuel Spittler May 12th, 1864.

Miles Moore *vs.* J. Ward, S. ½ N. E. 14, 3 S., 9 E., entered by J. Funkhouser M'ch 21st, 1864.

Wm. Grant *vs.* J. W. Ward, S. W. N. E. 27, 2 S., 6 E., entered by Wm. H. Grant Dec. 30th, 1863.

Hiram Tucker *vs.* W. B. Scates, N. W. N. W. 7, 3 S., 8 E., entered Aug. 25th, 1859, by Fieldon Herrold; S. W. N. W. 7, 3 S., 8 E., entered by Fieldon Herrold Dec. 13th, 1862.

N. N. Borah *vs.* W. B. Scates, N. E. S. W. 24, 1 S., 8 E., entered by N. N. Borah Dec. 13th, 1862.

Sam'l Booth *vs.* W. B. Scates, N. E. N. E. 3, 2 S., 9 E., entered by Chas. Smith Jan. 21st, 1864.

Sarah A. St. Leger *vs.* W. B. Scates, W. ½ N. W. 3, 2 S., 9 E., entered by Thos. Cowling Aug. 25th, 1859.

A. L. Wall *vs.* W. B. Scates, S. W. N. E. 21, 1 S., 9 E., entered by Vincent Shelton Nov. 28th, 1864.

Malinda Saunders *vs.* W. B. Scates, S. W. S. E. 11, 2 S., 5 E., entered by Richard Saunders Nov. 1st, 1864.

131 V. C. Borah *vs.* W. B. Scates, N. W. S. W. 13, 1 S., 8 E., entered by Geo. L. Borah Nov. 20th, 1863.

T. A. West *vs.* W. B. Scates, N. E. N. E. 1, 2 S., 9 E., entered by Sam'l A. Skinner Jan. 27th, 1863.

Henry Kincart *vs.* W. B. Scates, S. W. N. W. 17, 3 S., 8 E., entered by Wm. White Dec. 19th, 1863.

S. M. Hill *vs.* W. B. Scates, N. E. N. W. 21, 1 S., 9 E., entered by V. Shelton July 6th, 1864; S. E. N. W. 21, 1 S., 9 E., entered by same Dec. 5th, 1864; N. W. N. W. 21, 1 S., 9 E., entered by J. McFettridge Jan'y 26th, 1865; S. W. N. W. 28, 1 S., 9 E., entered by J. Crews Dec. 13th, 1864.

Z. Means *vs.* J. W. Ward, S. W. S. E. 4, 3 S., 6 E., entered by G. W. Foreacher Dec. 26th, 1862.

James Simms *vs.* W. B. Scates, S. E. N. E. 36, 1 S., 9 E., entered by Jas. Simms Aug. 21st, 1858; N. W. S. E. 25, 1 S., 9 E., entered by Jas. Simms Jan. 15th, 1863.

R. H. Puckett *vs.* W. B. Scates, N. E. N. W. 6, 3 S., 8 E., entered by H. G. Kershaw Jan'y 28th, 1864.

School Trustees *vs.* J. W. Ward, S. E. S. E. 26, 1 S., 9 E., entered by Wm. Conway Dec. 10th, 1863.

132 M. M. Wheeler *vs.* J. W. Ward, N. ½ N. E. 27, 2 S., 6 E., entered by M. M. Wheeler Dec. 30th, 1863.

Enoch Johnson *vs.* J. W. Ward, S. W. S. W. 21, 2 S., 9 E., entered by A. H. Briscoe Jan'y 18th, 1865.

Wm. Mabery *vs.* J. W. Ward, N. W. S. E. 4, 3 S., 6 E., entered by Wm. Mabery Feb. 7th, 1864.

L. H. Harris *vs.* W. B. Scates, N. E. S. W. 32, 2 S., 9 E., entered by Isaac Merritt Nov. 19th, 1863.

David McKibbon *vs.* W. B. Scates, S. W. S. E. 36, 1 S., 9 E., entered by Andrew Jett Jan. 7th, 1865.

Benj. F. Meeks *et al. vs.* W. B. Scates, N. W. S. W. 6, 3 S., 8 E., entered by Benj. F. Meeks Dec. 29th, 1862.

M. F. Whiting *vs.* J. W. Ward, N. ½ S. E. 36, 1 S., 9 E., entered by Wm. Conway Dec. 10th, 1863.

(Endorsed:) Filed April 4, 1884. J. A. Jones, clerk.

Exhibit 1, embracing 3 first columns. Exhibit 3. Exhibit 2 in Schedule Z, referred to in said intervening petition.

T. & R.	Sec.	Description.	Amount bid at sale.	Grantor.	Grantee.	Date.	Recorded.	Book.	Page.	Clerk entry b'k.	
2 n, 7 e. ...	24	S w n w.....	480	W. F. Bailey.....	John J. Backman	March 22d, 1872	.....	28	93	.....	John J. Backman.
	36	S e n e.....	400	Wayne county.....	W. F. Bailey.....	Sept. 23d, 1863	Sept. 23d, 1863	P	484		
				W. F. Bailey & wife.....	John J. Backman.....	Sept. 9th, 1864 / M'ch 9th, 1872	Oct. 6th, 1864 / M'ch 22d, 1872	2 / 28	456 / 93	.....	" "
	23	W ½ s e.....	480	W. F. Bailey.....	John J. Backman.....	Sept. 3d, 1863					
	23	S e s w.....	480	.....	.....	March 9th, 1872	.....	.....	.....	.....	" "
	24	W ½ s w.....	1120	.....	.....	Sept. 3d, 1863	.....	.....	.....	.....	" "
1 n, 8 e.....	5	S e s e.....	500	J. E. Atteberry.....	George Johnson.....	March 18th, 1873	March 19th, 1873	29	82	.....	Hugh Mills. George Johnson.
1 n, 7 e.....	1	E ½ s e.....	600	Wayne county.....	George Johnson	June 2d, 1863	June 2d, 1863	P	263		
1 n, 8 e.....	7	N w n w.....	520	Wayne county.....	Conrad Karn	Jan. 2d, 1865	Jan. 12th, 1865	R	91		
				Conrad Karn & wife and Wm. Zindel & wife...	Leander Karn	Ap'l 7th, 1868 / May 8th, 1876	Ap'l 7th, 1868 / May 12th, 1876	W / Q	101 / 614	.....	Leander Karn.
	7	S w n e.....	400	Wayne county.....	Calvin Keston	Jan. 22d, 1864	.....	.....	.....	.....	Calvin Keston.
	34	S w.....	960	Wayne county.....	Nathan Veasey.....	M'ch 4th, 1865	M'ch 4th, 1865	R	283		
				Benj. Orr & wife.....	L. C. and J. T. Kaufmann ..	M'ch 1st, 1875	Oct. 23d, 1875	35	242	.....	L. C. and J. T. Kaufmann
2 s, 5 e.....	11	S w s e.....	320	Wayne county.....	Richard Sanders	Nov. 1st, 1864	Nov. 1st, 1864	Q	482	16	Malinda Sanders' suit.
	11	S w s w.....	246	Richard Sanders' will..	Lucinda Sanders	.....	.....	.....	.....	.....	Lucinda Sanders.
	25	N e s w.....	64	J. Stroud.....	Ætna Life Ins. Co.....	Oct. 19th, 1876	Ap'l 30, 1877	36	471	.....	Ætna Life Ins. Co.
134											
1 n, 7 e.....	35	S w n e.....	320	I. I. Wakefield.....	Ætna Life Ins. Co.....	Nov. 20th, 1874	Nov. 28th, 1874	33	262	.....	Ætna Life Ins. Co.
2 s, 6 e.....	10	S e n e.....	560	Wayne county.....	James R. Bain.....	Dec. 9th, 1864	May 3d, 1872	28	424	46	James R. Bain.
	15	S w s e.....	320	Wayne county.....	Peter Hawkins.....	June 27th, 1863	June 27th, 1863	P	400	47	
				Peter Hawkins..	Benj. Stevens.....	June 27th, 1863	July 13th, 1863	M	663	.....	Benj. and F. Stevens.
				James Lane & wife.....	Sarah Wilkenson.....	Nov. 22d, 1869	Nov. 26th, 1869	Y	342	.....	Sarah Wilkenson.
	15	S e s w.....	560	Wayne county.....	Peter Hawkins	June 27th, 1863	June 27th, 1863	P	400	47	Benj. and F. Stevens.
				James Lane & wife.....	Sarah Wilkenson.....	Nov. 22d, 1869	Nov. 26th, 1869	Y	342	.....	Sarah Wilkenson.
2 n, 9 e.....	34	N e n e.....	240	.....	James H. Travis, entered..	Feb. 1st, 1858	.....	.....	.....	240	James H. Travis.
				James Lane & wife.....	Sarah Wilkenson.....	Nov. 22d, 1869	Nov. 26th, 1869	Y	342	.....	Sarah Wilkenson.
3 s, 7 e.....	2	N w.....	313	Ezra T. Hall & wife.....	John Pyket.....	Jan. 4th, 1866	Jan. 4th, 1866	R	288	.....	John Pyket.
	2	W ½ n e.....	423	J. V. Tennyson.....	John R. Murphy	July 29th, 1864	Ap'l 4th, 1865	Q	599	.....	John R. Murphy.
	2	S e s e.....	240	Hiram Tucker & wife..	David B. Harlan.....	Feb. 9th, 1870	Ap'l 6th, 1870	X	282	.....	David B. Harlan.
	4	S e s e.....	160	T. Cunningham	Alyshus Winters.....	M'ch 28th, 1868	Ap'l 6th, 1868	W	105	.....	Alyshus Winters.
	4	N w s e.....	160	S. Ryder & wife.....	Lewis J. and Alexis Ryder	Feb. 15th, 1872	M'ch 30th, 1872	Z	518	.....	Lewis J. and Alexis Ryder.

Schedule Z, to Accompany Intervening Petition—Continued.

T. & R.	Sec.	Description.	Amount bid at sale.	Grantor.	Grantee.	Date.	Recorded.	Book.	Page.	Clerk entry b'k.	
	4	S w s e.....	160	Wayne county.....	Lewis J. Ryder.....	Nov. 11th, 1863	Dec. 15th, 1863	V	639	.....	Lewis J. Ryder.
	9	N e.....	640	A. Winters & wife.....	Francis B. Merrill.....	Dec. 5th, 1868	Dec. 7th, 1868	W	564	.....	Francis B. Merrill.
		E ½ n w.....	320								
	12	S w n w.....	240	Wayne county.....	Hiram Tucker.....	Jan. 25th, 1864	Dec. 28th, 1864	R	81	.....	Hiram Tucker suit dismissed.
3 s, 8 e.....	7	W ½ n w.....	2,800	F. Herrold & wife.....	Hiram Tucker.....	Dec. 29th, 1862	May 26th, 1864	O	228	.....	Hiram Tucker suit dismissed.
1 s, 8 e.....	1	S e s w.....	320	Wayne county..... .	D. T. Fitzgerald.....	Oct. 7th, 1863	Oct. 8th, 1863	29	245	91	
135				D. Henderson.....	McKenzie & Sunderland..	Feb. 20th, 1873	Oct. 8th, 1873	30	452	.....	McKenzie.
1 s, 8 e. ...	1	S e s w.....	.....	Sunderland & wife.....	W. McRunnels.....	Oct. 16th, 1873	Jan. 29th, 1874	30	527	.....	W. M. McRunnels.
				McRenyolds & wife....	James A. Boyd.....	M'ch 29th, 1879	Ap'l 25th, 1879	34	540	.....	James A Boyd.
	5	N w s w.....	240	Wayne county.....	Lavina Sumpter.....	Feb'y 2d, 1864	.....	.....	.....	.....	Lavina Sumpter.
		S w s w	240	Wayne county.....	J. J. Turney.....	Jan. 12, 1865	Feb. 4th, 1865	R	605	923	
				Leander J. S. Turney..	Robley D. Adams	April 15th, 1874	April 16th, 1874	29	554	.....	Robley D. Adams, Jane Ridgway heirs
2 n, 7 e ...	25	S w n w.....	480	J. Gill, entered	....	Dec. 3rd, 1864	.....	.....	.....	201	
				L. J. S. Turney.....	Robley D. Adams	April 15th, 1874	April 16th, 1874	29	555	.....	Robley D. Adams.
				Caleb Ridgway & wife.	Gilbert J George.....	Aug. 4th, 1873	Jan. 10th, 1873	28	458	.....	Gilbert J. George.
1 n, 7 e ...	1	S w s e.....	240	G. W. Evans & wife	Isaac M. Crumbacker	May 2d, 1868	May 4th, 1868	V	335	.....	Isaac M. Crumbacker.
				Caleb Ridgway & wife..	Gilbert J. George	Jan. 4th, 1873	Jan. 4th, 1873	28	458	.....	Gilbert J. George.
				W. Gilbraith & wife....	Henry G. Wheeler	Aug. 1st, 1871	M'ch 18th, 1874	30	583	.....	Henry G. Wheeler.
				J. G. Williams	Oliver P. Murphy	Sept. 4th, 1879	Sept. 20th, 1879	34	615	.....	Oliver P. Murphy.
				B. T. Barr.....	Wm. Carson.....	April 26th, 1877	Nov. 13th, 1878	34	465	.....	Wm. Carson.
1 s, 8 e ...	8	E ½ n e n w.	200	J. D. Cope & wife	Allen Cope	June 8th, 1870	June 8th, 1870	X	340	.....	Allen Cope.
	8	W ½ n e n w.	200	J. D. Cope & wife.....	Wm. Robertson	M'ch 16th, 1871	M'ch 16th, 1871	Z	36	.....	Wm. Robertson.
	13	N w s w.....	560	Wayne county.....	George L. Borah..	Nov. 20th, 1863	Nov. 20th, 1863	P	581	.....	
				Isaac S. White & wife...	Valentine C. Borah	Feb. 20th, 1868	Aug. 11th, 1877	37	97	.....	Valentine C. Borah suit.
				Wm. L. Jones & wife...	John W Johnson	Feb. 28th, 1857	M'ch 20th, 1857	J	19	.....	John W. Johnson.
	24	N e s w.....	600	Wayne county.....	Wm. N. Borah.....	Dec. 13th, 1862	June 21st, 1863	P	47 or 97	.....	Wm. N. Borah suit.
3 s, 8 e.....	6	N e n w.....	621	Harlan & Kensbals.....	Entered 44.35.....	Jan. 28th, 1864	.....	.....	.....	116	
				Rob't Puckett & wife...	Maria Harlan & Benj. Meeks, adm'rs.	Dec. 12th, 1872	Jan. 8th, 1873	H	175	.....	Mortgage not released on record.
136				Rob't Puckett & wife...	Maria Harlan	Dec. 4th, 1872	Dec. 14th 1872	A	317	.....	Maria Harlan, Benj, Meeks,
				Joseph G. Barkley.....	Chas. Sibley.....	Sept. 4th, 1867	Sept. 7th, 1867	V	67	.....	Chas. Sibley.
	6	S w n w.....	670	Wayne county.....	Thos. Cooper, 44.35.....	Dec. 9th, 1863	Dec. 12th, 1863	T	634	116	
				Thos. Cooper & wife...	Reuben Meeks.....	March 24th, 1864	M'ch 26th, 1864	Q	210	.....	Reuben Meeks.
				A. G. Cloud & wife	Reuben G. Meeks.....	Jan. 26th, 1871	Jan. 26th, 1871	27	160	.....	Reuben G. Meeks.
	6	S w s w....	1,600	Wayne county.....	Joseph Odell, Jr.....	Dec. 10, 1863	.....	.....	.....	.....	Joseph Odell, Jr., Wm. Lane.

	6	N w s w	1,600	Wayne county	Benj. S. Meeks	Dec.	27, 1862	Dec.	27th, 1862	P	94		Benj. S. Meeks' suit, Geo. F. Pykert, Jas. P. & Edward Brockway, Sam'l C. and Erasmus Pendelton.
	7	N e s w	989	T. Parmer & wife	39.86, James K. Parmer	Aug.	28th, 1878	Oct.	19th, 1878	38	31		James K Parmer.
	7	W ½ s w	996	M. Young & wife	79.72, Jasper Partridge	April	30th, 1870	May	4, 1870	X	307		Jasper Partridge.
	7	W ½ n w	2,800	F. Herroldson & wife	Hiram Tucker	Dec.	29th, 1862	May	26th, 1864	O	28		Hiram Tucker suit.
	17	N e n w	480	Wayne county	Wm. A. Atteberry	Dec.	8, 1863	Dec.	8th, 1863	Q	117		Wm. A. Atteberry.
				Isaac Rhodes & wife	Eliza C. Yaringer, mort	June	29th, 1872	Aug.	9th, 1872	F	602		Eliza C. Yarringer.
				Isaac Rhodes & wife	Henry Freland	Aug.	24th, 1878	Dec.	31st, 1878	34	490		Henry Freland.
	17	N w n w	400	Isaac Rhodes & wife	Eliza C. Yaringer	June	29th, 1872	Aug.	9th, 1872	F	602		Eliza C. Yarringer.
				Henry Freland	Thos. Behymer	M'ch	13th, 1879	May	22d, 1879	38	287		Thos. Behymer.
	17	S w n w	400		Wm. White, entered	Dec.	19th, 1863						Wm. White, Henry Kincart suit.
	17	N w s w	240	Sarah Wilkenson & husband.	Robert T. Wilkenson	Oct.	4th, 1872	Oct.	8th, 1872	A	306		Robert T. Wilkenson.
	17	S w s w	240		Wm. Smith, entered	Dec.	30th, 1864					120	Wm. Smith.
137				J. W. Lay & wife	Thos. M. Lay, mort	Feb.	2d, 1873	Feb.	21st, 1873	J	59		J. W. Lay, Thos. M. Lay.
1 s, 9 e	6	W ½ s e	1,360	Wayne county	Van R. Price	Nov.	26th, 1864	June	8, 1865	35	62	122	Van R. Price.
	21	N w n e	320	Wayne county	William F. Spittler	Nov.	10th, 1864	Nov.	10, 1864	Q	540		Wm. F. Spittler.
	21	S w n e	320	J. S. Newson & wife	James W. Calvin	Oct.	12th, 1868	July	9, 1870	X	353		James W. Calvin.
				R. H Campbell & wife	Anderson Wall, mort	M'ch	5th, 1875	Jan.	3, 1878	L	572		Anderson Wall suit, R. H. Campbell.
	21	E ½ n w	640	Wayne county	Vincent Shelton	July	6, 1864	July	6, 1864	Q	357	127	Sterling M. Hill suit.
	21	N w n w	640	J. Mc. Pettridge & wife.	Lyman E. McPettridge	M'ch	9, 1870	July	19, 1876	36	75		" " " Lyman E. Pettridge.
	25	N w s e	240	Wayne county	James Simms	Jan'y	14, 1863	Feb.	15, 1871	27	192	129	James Simms' suit.
				James Simms	Chas. Wood, mort	Jan'y	15, 1863	Jan.	15, 1863	C	441		Chas. Wood.
	28	S w n w	240	Wayne county	James Crews	Dec.	13, 1864	Dec.	13, 1864	R	38		James Crews suit, by S. M. Hill.
	36	S e n e	560	Wayne county	James Simms, entered	Aug.	21, 1858	Feb.	15, 1871	27	192 or 300	132	James Simms' suit.
2 s, 9 e	1	N e n e	406	Wayne county, 40.61	Sam'l A. Skinner	Jan.	27, 1863	Jan.	27, 1863	E	101	133	Samuel A. Skinner.
				Jack Wade & wife	Wilkenson Brock	Aug.	12, 1869	Feb.	24, 1870	V	669		Wilkenson Brock.
				Hiram Brock & wife	E. A. & J. E. West	Dec.	21, 1872	Dec.	26, 1872	28	438		E. A. & J. E. West, F. A. West suit.
	3	N e n e	257	Wayne county, 42.91	Chas. Smith	Jan.	21, 1864	Jan.	21, 1864	Q	69		
				Chas. Smith & wife	Sam'l Booth	Jan.	12, 1865	Jan.	12, 1865	R	123		Sam'l Booth suit.
	30	S e s w	505	John F. Wagner, 42.07	John F. Wagner			Ap'l	16, 1877	36	548		John L. Wagner.
				Wayne county	Reuben Mason	Dec.	11, 1863	Dec.	11, 1863	P	632		
	30	S w n w	593	Wayne county, 42.37	Wiley Hooper	Feb.	8, 1865	July	9, 1865	R	213		Wiley Hooper.
				Circuit Court Record 1, page 158, court finds that this tract belongs to—									Henry Washburn.
	32	S w n w	240		James M. Harris, entered	Ap'l	13th, 1863						James M. Harris.
3 s, 9 e	8	N e s w	400	Wayne county	Martin M. Wheeler, guard.	Aug.	30th, 1860	Aug.	7, 1860	L	604		Suit dismissed.
138				Christian Berkley & wife.	John Haefiele	Sept.	8th, 1875	Sept.	13, 1875	34	76		John Haefiele.
	8	S w s w	320	Wayne county	Joseph Chrisman	M'ch	28th, 1864	M'ch	28, 1864	Q	213		

Schedule Z, to Accompany Intervening Petition—Continued.

T. & R.	Sec.	Description.	Amount bid at sale.	Grantor.	Grantee.	Date.	Recorded.	Book.	Page.	Clerk entry b'k.	
				Joseph Chrisman & wife.	Thos. J. Clark	Aug. 22, 1864	Aug. 23, 1864	O	275	.....	Thos. J. Clark.
	10	N e und. ½	320	.....	.....	Sept. 24, 1864	.....	.....	.....	.....	Jno. Strowman, D. B. Leach *vs.* Cornell.
	15	N w	960	Wayne county	Landen C. Kelley	Oct. 6, 1863	Jan. 11, 1870	Y	385	.....	Landen C. Kelley.
				T. Bozeman & wife	John R. Odell	M'ch 4, 1871	M'ch 6, 1871	Z	13	.....	John R. Odell.
				J. S King & wife and George W. Parker & wife.	James M. Kelley	Nov. 17, 1874	M'ch 13, 1875	A	556	.....	James M. Kelley.
	17	N w n w	320	Wayne county	J. Odell	M'ch 31st, 1863	.....	.....	.....	.....	J. Odell, John Stanley.
	18	N ½ n e	840	Wayne county	John Johnson	Oct. 12, 1863	.....	.....	.....	.....	John Johnson.
2 n, 7 e	26	N e n e	400	Wayne county	H. Mills	Sept. 15th, 1863	Sept. 15, 1863	P	504		
				H. Mills & wife	Jonathan Mills	Aug. 16, 1864	Oct. 6, 1864	Q	454	.....	Jonathan Mills.
1 n, 8 e	28	N e n w	600	Wayne county	W. Calder	M'ch 6, 1864	M'ch 2, 1864	Q	206	214	
				Trustees of school	Theo. H. Hadley	M'ch 8, 1871	Sept. 20, 1877	32	360	.....	Theo. H. Hadley claims 10 acres.
				J. W. Ingram & wife	Michael Hiller	Feb. 18, 1-73	M'ch 28, 1873	28	635	.....	Michael Hiller claim 30 acres.
	35	E ½ n e	1,120	Wayne county	J. B. Borah	Nov. 5, 1874	.....	I	489	216	
		N e n e	.....	J. T. Frazer	James Merrick	Dec. 5, 1867	.....	Y	333	.....	James Merrick.
				T. H. King	Joseph Rogers	Jan. 19, 1872	.....	30	367	.....	Joseph Rogers.
139											
1 n, 8 e	35	S e n e	.....	James B. Borah	T. H. King	May 19th, 1865	.....	R	452		
				T. H. King	James W. Bell	Ap'l 11, 1873	.....	32	115	.....	James W. Bell.
				John Fishell	George Fishell	Dec. 28, 1846	.....	Z	422	.....	George Fishell.
				In a suit for partition the following claimants appear, March term, 1876				K	8-59	.....	Emeline, Wm. J., John J., Sarah, Sorilda, Anton, & Adam Austerman, Elizabeth & Marion Laster, as heirs of A. Austerman.
1 n, 9 e	23	N w n w	240	Wayne county	Chas. Wood	Dec. 30th, 1864	Dec. 30th, 1864	R	86		
				W. Hilliard & wife	Abner Cox	Feb. 2, 1870	Nov. 26, 1875	32	210	.....	Abner Cox.
2 n, 9 e	21	S e s w	320	Wayne county	Susan M. Ramsey	Sept. 30, 1863	Sept. 30, 1863	P	505		
				William J. Fullard & wife.	Wm. Rhode	Sept. 21, 1874	Sept. 22, 1874	32	36	.....	Wm. Rhode.
	23	S e n e	240	Wayne county	Thomas Johnson	Sept. 27, 1864	M'ch 27, 1865	R	358	236	
				Thos. Johnson & wife	John C. Weaver	Sept. 23, 1864	May 27, 1865	R	467	.....	John C. Weaver.
				James Pierce & wife	Hugh M. Sanderson	M'ch 25, 1858	Ap'l 26, 1858	K	365	.....	Hugh M. Sanderson.

	23	N e ne	240	Wayne county	Thomas Johnson	Jan.	23, 1864	Jan.	23, 1864	Q	5		
				Moses Johnson & wife	First Nat'l Bank, Olney	Oct.	30, 1877	Nov.	1, 1877	32	68		First Nat. Bank, Olney.
	34	N e ne	240		James H. Travis, ent'r'd	Feb.	1, 1858					240	
				Sheriff Wayne county	James Lane	July	31, 1867	July	31, 1867	N	463		
				James Lane & wife	Sarah Wilkenson	Nov.	22, 1869	Nov.	26, 1869	Y	342		
1 s, 5 e	3	W ½ s w	720	Wayne county	Andrew Martin	Nov.	23, 1864	Nov.	28, 1864	Q	501	1	James Martin.
				A. Martin & wife	James Martin	M'ch	17, 1866	M'ch	17, 1866	T	252		
	3	S e n w	338	Wayne county	Andrew Martin	May	2, 1861	May	2, 1861	W	140	1	
140				Henry Martin, adm'r	Andrew and James Martin	May	20th, 1871	Feb.	20th, 1872	28	47		Andrew and James Martin.
	5	N e se	320	Wayne county	Elias Cook	Jan.	28, 1864	Jan.	28, 1864	Q	115	2	Elias Cook.
	5	N w s e	320	Wayne county	Simeon Given	Dec.	14, 1861	Dec.	21, 1861	U	322		
				Simeon Given & wife	E ias Cook	M'ch	19, 1863	Ap'l	10, 1863	M	613		Elias Cook.
				Francis M. Atteberry	Wm. M. Branson	Nov.	7, 1864	Nov.	9, 1864	Q	531		Wm. M. Branson.
	8	N ½ n e S w n e	480 240	Wayne county	Isaac Garrettson	Dec'r	18, 1863	Dec.	26, 1863	Q	12	3	Isaac Garrettson.
					Wm. Keen	Nov.	22, 1863	Nov.	22, 1863	P	601	5	Wm. Keen.
	15	N ½ s w	480	Wayne county	Jonathan Bozarth	Jan.	6, 1864	Jan.	8, 1864	Q	361	5	Jonathan Bozarth.
	15	S w s w	240	Wayne county	John W. Anderson, entered—	Oct.	13, 1852					13	John W. Anderson.
2 s, 5 e	2	N w n e	400										
				Sheriff of Wayne county.	Aaron Cloud	Aug.	29, 1865			R	566		Aaron G. Cloud.
2 s, 6 e	2	S e s w	480	Wayne county	Richard White	Dec.	2, 1863	Dec.	2, 1863	Y	354	43	
		N e s w	480	E. V. Party *vs.* Sarah	Bane *et al.* Decree, May term, 1874. Record					J	280		Sarah Bane.
	2	W ½ s w	960	Wayne county	Riley Harris	M'ch	7, 1863	M'ch	7, 1863	P	147	43	
				Sion Harris	U. W. Harvey	Feb.	1, 1877	M'ch	12, 1877	34	249		U. W. Harvey.
				Riley Harris	John W. Gardiner	Dec.	23, 1869	M'ch	8, 1870	F	272	*	John W. Gardiner.
	24	E ½ s e S w s e	960	Wayne county	Henry S. Ellis	Ap'l	9, 1864	Ap'l	9, 1864	Q	231	50	
				J. Ellis, adm'r	Adaline and Mary Ellis	Dec.	17th, 1870	June	5, 1872	28	167½		Adaline and Mary Ellis.
141													
2 s, 6 e	27	S w n e	400	Wayne county	Wm. H. Grant	Dec.	30th, 1863	May	28th, 1870	Y	523	51	
				Wayne county	Josiah C. Slaton	Feb.	9, 1864	Sept.	4th, 1867	U	530	51	
				Wm. H. Grant	Martin M. Wheeler	Feb.	16, 1880	Feb.	27, 1880	39	194		Martin M. Wheeler.
				Josiah C. Slaton & w	John J. Farmer	Sept.	27, 1873	June	14, 1875	32	165		John J. Farmer suit, by W. H. Grant.
	27	N ½ n e	800	Wayne county	Martin M. Wheeler	Dec.	30, 1863	Ap'l Dec.	13, 1866 30, 1863	T	229	51	Martin M. Wheeler.
	27	S e n e	400		Josiah C. Slaton, ent'd	Oct.	9, 1864					51	Josiah C. Slaton.
	31	S e s e	400		E. Constable, ent'd	March	21, 1864						E. Constable.
3 s, 6 e	4	S w s e	360		G. W. Foraker, ent'd	Dec.	26, 1862					56	
				Geo. W. Foraker & w	G. W. Foraker	Sept.	4, 1872	Sept.	7th, 1872	30	1		
				Z. T. Means	Geo. W. Draper	Sept.	12, 1874	Jan.	25, 1875	33	372		Geo. W. Draper suit, by Z. Means.
	4	N w s e	360	Wayne county	Wm. Mabry	Feb.	27, 1864	Ap'l	23, 1872	28		56	Wm. Mabry.
1 s, 9 e	10	N e s w	360	Wayne county	Alfred Orr	May	12, 1864	May	12, 1864	2	293	123	
				A. Orr & wife	Louisa J. Woody	Oct.	3, 1870	Oct.	13, 1870	X	458		J. Woody suit, by A. Orr.
	10	S e s w	360		Commodore E. Fitch, ent'd	Nov.	29, 1864					124	
				C. E. Fitch & wife	Francis M. Fitch	Jan'y	13, 1869	Jan.	13, 1869	Y	37		Francis M. Fitch.
	10	N e n w	400	Wayne county	Michael Arnold	Dec.	8, 1863	Dec.	8, 1863	P	617		Michael Arnold.

*See Co. Court Record 33, p. 84.

Schedule Z, to Accompany Intervening Petition—Continued.

T. & R.	Sec.	Description.	Amount bid at sale.	Grantor.	Grantee.	Date.	Recorded.	Book.	Page.	Clerk entry b'k.	
				Wayne county	Susan Pharr	Feb. 27, 1864		27	350	.....	Susan Pharr.
	13	S w s w	480	Elias Tree & wife	J. Harper, mort	Oct. 15, 1868	Ap'l 5, 1869	G	136	.....	Elias Tree, John Harper.
	26	N e s e	680	Wayne county	John Wade	Dec. 21, 1863	Feb. 6, 1871	27	182	.....	John Wade.
	26	S e s e	680	Wayne county	Wm. Conway	Dec. 10, 1864	July 8, 1864	2	369		
				Trustees	Miles Griffin	Oct. 25, 1872	Nov. 27, 1872	30	95	.....	Miles Griffin suit, by trustees.
142	26	N w s e	680	Wayne county	Wm. Conway	Dec. 10th, 1864	July 22, 1864	2	369	.....	Wm. Conway.
	26	S w s e	680	Wayne county	John M. Harris	April 20th, 1863	Oct. 24, 1865	2	628		
				John M. Harris	A. P. Harris	M'ch 15, 1866	March 20, 1866	L	366	.....	A. P. Harris.
2 s, 9 e	1	N w n e	122	Wayne county	B. D. Skinner	Dec. 5, 1863	Feb. 7, 1869	R	205		
				B. D. Skinner	Matilda J. Skinner	M'ch 15, 1870	Ap'l 13, 1870	Y	481	.....	Matilda J. Skinner.
	1	S w n e	122	Wayne county	B D. Skinner	Feb. 10, 1863	Feb. 10, 1863	P	100	133	
				B. D. Skinner	Matilda Skinner	March 15, 1870	Ap'l 13, 1870	Y	481	.....	" "
3 s, 9 e	3	E ½ n w ¼	455	Wayne county	Samuel Rogers	April 4, 1864	July 16, 1865	R	140	145	
				Nathan Merritt & Co	Orvill Pool	Nov. 1, 1870	Dec. 7, 1870	A	114	.....	Marshall Pool, Ellen P. Peeples, Mary P. Docker, Augusta Townsend, heirs of O. Pool.
	3	N w n w	227	Wayne county	R. Frame	March 3, 1864	April 7, 1866	T	215		
				James Burns & Co	Samuel Thomas	May 29, 1875	Dec. 11, 1875	32	217	.....	Samuel Thomas.
	3	S w n w	227	Wayne county	James Vynum	M'ch 3, 1864	Ap'l 25, 1865	R	413		
				John McField	J. Hansinger	Dec. 10, 1874	Dec. 15, 1874	33	309	.....	J. Hinsinger.
	9	S e n e	240	Wayne county	J. C. Cravens	M'ch 29, 1864	M'ch 29, 1864	2	216		
				E. J. Cravens	Wm. B. Law	Feb. 28, 1865	July 1, 1865	O	440		
				W. B. Law & Co	John Waldon	April 2, 1869	April 27, 1870	X	301		
				Moses Scrivener & Co.	Wm. Richardson	March 15, 1864	March 17, 1864	O	140	.....	Wm. Richardson.
				W. W. Fulton	Geo. W. Odell	Ap'l 5, 1880	Ap'l 13, 1880	40	136	.....	Geo. W. Odell.
	9	N e n e	240	Wayne county	D. L. McCawley	May 7, 1864	May, 7, 1864	2	307	147	
				John Ryan & w	M. J. Dickenson	March, 3, 1872	April 29, 1872	28	168	.....	M. J. Dickenson.
143											
3 s, 9 e	9	N w n e	240	Wayne county	William Stewart	April 5th, 1864	June 9, 1877	36	532	147	
				Wm. Stewart & Co	Orvill Pool	Nov. 5, 1870	Dec. 7, 1870	27	98	.....	Marshal Pool, Ellen P. Peeples, Mary P. Docker, Augusta Townsend.
				Jason H. Short	Wm. Britton	Jan. 13, 1869	July 3, 1869	V	592	.....	Wm. Britton.
	9	S w n e	240		Milton Craven, ent	Feb. 24, 1864				55	Milton Cravens.
				Wm. H. Daniel & wife, mort.	Martin Hensinger, released—	Dec. 5. 1867	Nov. 30, 1868	T	106	.....	W. H. Daniel.

				Jason H. Short	Wm Britton	Jan.	13, 1869	July	30, 1869	V	592		Wm. Britton.
	11	N e	960		Daniel L. McCawley	May	7, 1864						D. L. McCawley.
	14	S ½ n e	800	Wayne county	John Funkhouser	Feb.	4, 1865	Feb.	4, 1865	R	181	149	John Funkhouser, suit by Moore.
1 n, 9 e	1	S e s w W ½ s w		Wayne county	I. S. E. R. R. Co.	Oct.	13, 1868	June	15, 1872	28	222		
				I. S. E. R. R. Co.	S. I. S. E. R. R. Co.	July	29, 1871	"	"	"	325		
				S. I. S. E. R. R. Co.	Charles A. Beecher	July	10, 1871	May	31, 1872	"	232		Chas. A. Beecher.
2 n, 9 e	21	S w s w		Wayne county	A. Briston	Jan.	18, 1865			36	382		
				A. Briston & Co.	Enoch Johnson	Ap'l	1, 1868	May	28, 1868	V	339		Enoch Johnson, T. T.
	21	S e s w		Wayne county	Susan M. Ramsay	Sept.	30, 1863	Sept.	30, 1863	P	505		
				K. Ramey & Co.	James Matthews	Jan.	18, 1867	Ap'l	13, 1867	U	271		
				A. Mathews & w	James Matthews	Sept.	14, 1867	Dec.	21, 1867	U	691		
				A. Matthews & w	Wm. J. Fullard	Oct.	16, 1871	Sept.	22, 1874	32	35		
				Wm. J. Fullard & Co.	Wm. Rhode	Sept.	21, 1874	Sept.	22, 1874	32	36		Wm. Rhode.
1 n, 8 e	34	W ½ s e		Wayne county	Nathan Veasey	Mar.	4, 1865	March	4, 1865	R	283		Nathan Veasey.
				Wayne county	Elizabeth Kelley	July	—, 1880						Elizabeth Kelley, T. T.

(Endorsed :) Filed April 4, 1884. J. A. Jones, clerk.

144 And afterwards, to wit, on the 25th day of April, in the year last aforesaid (A. D. 1884), came the defendant, Joseph Huntsinger, by his solicitor, and filed in said clerk's office his answer in said cause; which said answer is in the words and figures following, to wit:

Answer of Joseph Huntsinger.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In Circuit Court, Southern District of Illinois. June Term, 1884.

ELIZABETH H. TAYLOR *et al.* }
v. } Chancery.
J. B. BOZARTH *et al.* }

The separate answer of Joseph Huntsinger, one of the respondents, to the bill of complaint by the complainants herein filed.

Saving and reserving unto himself all and all manner of exceptions to the many manifest errors, insufficiencies, and uncertainties in said bill, answering, says that he is the owner of the following-described real estate mentioned in said bill, viz:

S. W. ¼ of N. W. q'r of sec. 3, T. 3 S., R. 9 E., 3rd P. M.; N. W. ¼ of S. W. q'r of sec. 3, T. 3 S., R. 9 E., 3rd P. M.; S. E. ¼ of N.
145 E. q'r of sec. 4, T. 3 S., R. 9 E., 3rd P. M., and N. E. ¼ of S. E. q'r of sec. 4, T. 3 S., R. 9 E., 3rd P. M., all in Wayne county, in the State of Illinois.

And this respondent avers that — the said land nor any part thereof is embraced, mentioned, or in any manner described or intended to be embraced, mentioned, or described in the mortgage in said bill mentioned and set out, as will fully appear by said mortgage, profert of which is for greater certainty here made, and this respondent here prays to be dismissed out of said bill with his reasonable costs, and for such other and further relief as to equity may in such cases appertain.

G. J. GEORGE,
ORENDORFF & CREIGHTON,
Sol's for Resp't.

(Endorsed:) Filed April 25, 1884. J. A. Jones, clerk.

And afterwards, to wit, on the 20th day of May, in the year last aforesaid (A. D. 1884), came the defendant, Wm. A. Atteberry, by his solicitors, and filed in the office of the said clerk his answer in said cause; which said answer is in the words and figures following, to wit:

146 *Answer of Wm. A. Atterberry.*

UNITED STATES OF AMERICA,
Southern District of Illinois, } ss:

Circuit Court United States. June Term, 1884.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.*, WM. A. ATTEBERRY, & —. } In Chancery.

The answer of Wm. A. Atteberry, one of the respondents, to intervening petition filed in above cause.

To so much thereof as may be necessary to make answer unto, answering, says—

That so far as said petition refers to this respondent or any matter therein set forth as to him they are not true; that he states the fact to be that as to any of the lands described therein does he claim or have title or interest now or at any time in the past, not by deed, will, of record, or otherwise, but now fully and freely disclaims ownership therein.

Therefore, in consideration of the facts so stated herein, he asks this honorable court to protect him by its judgment in the premises against any and all cost that might occur on his default to
147 make answer hereto, and that he be hence dismissed without cost.

And, as a dutiful citizen, will ever pray, &c.

ORENDORFF & CREIGHTON,
Sol's for Def't.

(Endorsed:) Filed May 20th, 1884. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 2nd day of June, in the year last aforesaid (A. D. 1884), at the June term of said court, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Allowing Parties to Intervene in the Cause.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 113, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.* } In Chancery.

148 On motion of H. C. Whitney, Esq., solicitor for complain-

ants, ordered that all parties having interests in harmony with complainants herein have leave to intervene in said suit and have any interests they may claim adjudged therein.

And afterwards, to wit, on the same day and year last aforesaid (to wit, June 2nd, 1884), came the defendant-, George Pyket *et al.*, by H. Tompkins and R. P. Hanna, their solicitors, and filed in said clerk's office their demurrer in said cause; which said demurrer is in the words and figures following, to wit:

Demurrer of Geo. Pyket et al.

Circuit Court United States, Southern District Ills. June Term, 1884.

FERNANDO B. HANE
v.
GEORGE PYKET *et al.*

Intervening in case of—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH.
Bill to Reforeclose a Mortgage.

The defendant-, George Pyket *et al.*, all parties served not
149 depending thereon, by their attorneys, H. Tompkins and R. P. Hanna, demur to the said bill and bill of complaint files in said cause, also to the intervening petition of Fernando B. Hane, and for cause of demur shows that there is no equity in the bill.

And for special cause of demur the defendant- says that the complainant- ought not to have or sustain any cause of action against def'ts.

1st. That complainants seek relief by supplemental bill or by bill and petition of unknown name with the allegations that the facts and circumstances on which it is based existing before the original was filed.

2d. That complainants seek a right of recovery on evidence and proceedings had in a cause wherein defendants were neither party nor privy thereto.

3rd. That the allegations in complainants' bill shows no privity of contract expressed or implied between complainant- and defendants.

4th. That the allegations in complainants' bill of complaint shows a State claim barred by the statute of limitation.

150 5th. That the allegations in complainants' bill shows no right or duty performed by complainants for defendants that they should be subrogated to pay claim against defendants.

6th. That the allegations in complainants' bill shows want of title in complainants.

7th. That the relief is sought for a part of a whole matter.

8th. That it shows want of proper parties, both complainants and defendants.

Whereupon these defendants demur to the said bill of complaint and intervening petition and to all the matters and things therein contained and prays judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer thereto, and prays to be dismissed, each with their reasonable cost in this behalf sustained.

GEO. PYKET ET AL.,
All Def'ts Served,
Per H. TOMPKINS &
R. P. HANNA,
Their Att'ys.

H. TOMPKINS &
R. P. HANNA,
Resp'ts' Sol'rs.

(Endorsed :) Filed June 2nd, 1884. J. A. Jones, clerk.

151 And also upon the same day and year last aforesaid, to wit, June 2d, 1884, come the defendants, M. M. Wheeler, Henry Kincart, Hiram Tucker, Wm. Mabry, and Malinda Sanders, by H. Tompkins, Esq., their attorney, and filed in said clerk's office their pleas in said cause; which said pleas are in the words and figures following, to wit:

Plea and Answer of M. M. Wheeler.

In Circuit Court United States, Southern District Ills. June Term, 1884.

FERNANDO B. HANE
v.
J. J. BUSHMAN, *et al.*

Intervening in suit of—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH.
} Bill to Reforeclose a Mortgage.

The separate plea and answer of M. M. Wheeler, def't, to complainant's bill of complaint.

This def't, to all the relief sought by the bill, and also to the discovery thereby sought, except the discovery sought by cr in
152 respect of so much of the said bill as prays that this def't may answer and set forth whether the county of Wayne executed a deed and mortgage to the use of the Mt. V. R. R. Co., dated April 20th, 1859, to secure the payment of $800,000 of the bonds of the Mt. V. R. R. Co., and that this def't purchased of the county of Wayne only the equity of redemption to redeem from the said mortgage—

This def't pleads in bar, and for plea says that on the — day of ——, 1880, W. H. Grant filed in the circuit court of Wayne county, Ills., his bill of complaint against Joseph W. Ward to set aside his deed made and executed to him by N. M. Broodwell as a cloud on this def't's lands, to wit, the S. W. N. E. sec. 27, town. 2 S., range 1 east, 3 P. M., it then being the lands of the said Wm. H. Grant, and being the lands described in the complainant's bill of complaint, and as now belonging to this def't.

That Walter B. Scates, as att'y for the said Ward, appeared in the said cause, filing first a demur, and after argument on the said demur, the same being overruled, he filed a plea setting up his title by virtue of a decree obtained in a case entitled John W.
153 Kennicott *et al. vs.* The County of Wayne, at the June term, 1874, of this court, with a sale of the lands on the 18th day of Sept., 1877, and by deed under said sale dated the 4th day of May, 1879, which plea was alike overruled, after which he filed an answer; whereupon this def't filed a replication, and after full proof was taken and argument of counsel the court entered a decree declaring his title was a cloud on the title of this def't's lands, as above described, and that the same were null and void, and which is more fully shown by said decree, which this def't here pleads in bar, a true copy of which is here attached, marked Ex. A, and made a part of this plea.

All of which matters and things this def't avers to be true and pleads the same to the whole of the said bill except such part of discovery thereby sought as aforesaid, and this def't prays the judgment of this honorable court whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and prays to be hence dismissed with his cost.

154 And, for answer to such parts of the said bill as are excepted by this def't, admits that he purchased the said land from the county of Wayne.

But denies that he purchased only the equity of redemption, and avers that he purchased the legal title in fee under a power whereof the county of Wayne had the right and power to convey the fee as is here shown by the following:

1st. The Congress of the United States duly passed an act—act approved Sept. 28th, 1850—entitled An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

2nd. The Legislature of the State of Illinois passed an act, approved by the Governor of said State on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and pay the expense of surveying and selecting the same, vesting the title to said lands in Wayne county.

155 And to so much of complainant's bill as sets up and alleges that the county of Wayne executed a trust deed and mort-

gage, dated April 20th, 1859, on the lands now sought to be reforeclosed this def't denies.

He admits that S. J. R. Wilson and T. M. Scott, two of the county judges, did sign a pretended deed and mortgage which was put of record as charged.

But def't denies that it was the act of the county of Wayne or by any power vested in the county of Wayne.

But avers that it was done without any power existing for the county of Wayne to be bound.

That it was thereby alone the act of S. J. R. Wilson and T. M. Scott—

It being done out of any term of court, either general or special, without any notice to the other county judge, although he was residing in the county; and def't avers that there was no power either for the county of Wayne to aid the Mt. V. R. R. Co. nor for the R. R. Co. to secure the aid of the county by the so-called mortgage of the swamp lands, as will appear by the said trust deed and mortgage upon their face.

156 Def't admits that certain parties, to the number of over forty, claim title or right under and by virtue of being successors or assigns of the Mt. V. R. R. Co., and, claiming to hold the lands of the Mt. V. R. R. Co., went through a proceeding in this court and obtained a decree to sell the said lands without def't or the said W. H. Grant being a party thereto, as set out in complainant's bill, and that deeds were made to parties pretending to purchase, and that this def't and many more did institute suit to set aside the same, as alleged by complainant's bill, which was commenced on the — day of ——, 1880, in the circuit court of Wayne county, it being for the Oct. term of that court.

That a large number of suits were so commenced, being of like character.

That the same and each was defended by said Walter B. Scates, the party def't therein—

1st by demur, then by plea, then by answer, and full evidence taken.

That the said court, at the Oct. term, 1881, in the case of Preston R. King *vs.* Walter B. Scates, one of the same class, decreed

157 that Scates' title so obtained with his deeds of record were null and void and were a cloud on the title of this def't.

Whereupon the said Walter B. Scates took an appeal to the supreme court of the State of Illinois, and by agreement all other cases, among which was the case Wm. H. Grant *vs.* Joseph W. Ward, were held in abeyance until the same was passed upon.

That said supreme court affirmed the decision of the lower court, which decision is now reported and published in Freeman's advance sheets of Ills. Reports, which is made a part of this answer.

That the said W. H. Grant had so instituted a suit, which was held in abeyance until the supreme court of the State of Ills. should so pass upon the case of P. R. King *vs.* Walter B. Scates.

That at the March term, 1884, — the said court of Wayne county the case of Wm. Grant *vs.* Joseph W. Ward, involving the S. W. N.

W. sec. 27, town. 2 south, range 6 east, 3 P. M., was taken up and decree rendered in said cause decreeing that the consideration for the executing of the said mortgage and trust deed totally and wholly failed.

158 That the act of S. J. R. Wilson and T. M. Scott in executing the said deed and mortgage was not the act of the county of Wayne.

That the county of Wayne had no power to execute a mortgage to the use of the Mt. V. R. R. Co., and they were and are null and void and a cloud on the title of this def't, and decreed that they and all title thereat acquired be cancelled of record.

That said suits were pending in said court long before the said complainant, F. B. Hane, claimed to have acquired title to the said land by purchase of the said Joseph W. Ward.

And the def't, further answering, denies that the complainant is entitled to the relief *on* any part thereof in the said bill of complaint, and prays a severance from other def't in this cause, and to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

M. M. WHEELER.

H. TOMPKINS,
Resp't's Sol'r.

159 STATE OF ILLINOIS, } *ss:*
Wayne County, }

Personally appeared before me this — day of May, 1884, M. M. Wheeler, the above-named def't, and, being duly sworn, says that the facts set forth in the foregoing plea are true, and that the matters therein stated on information and belief he believes the same to be true.

[SEAL.]

R. E. MABRY,
Cir. Clerk.

EXHIBIT "A" to Plea of M. M. Wheeler.

STATE OF ILLINOIS, } *ss:*
Wayne County, }

Wayne County Circuit Court, to March Term, A. D. 1884.

WM. H. GRANT, }
vs. } Bill to Remove Cloud from Title.
JOSEPH W. WARD. }

This cause having been submitted to this court for decision at its March term, 1884, it being on the 5th day of April, 1884, and being the 10th day of term, with leave to counsel to file argument in vacation, and such argument since said submission having

160 been filed, and the same, together with said bill, answer, replication, exhibits, and proofs, both oral and documentary

and in depositions, with stipulations and argument of counsel, and having been fully considered by the court, and the court, now being fully advised in the premises, finds—

That the county of Wayne, in the State of Illinois, being the owner of the lands in this cause involved, described as follows, to wit, the southwest quarter of the northeast quarter section twenty-seven, all in town. 2 S., R. 6 E. in said Wayne county, Illinois, and on the 30th day of December, 1863, the said county of Wayne sold and conveyed said S. W. N. E. sec. 27, T. 2 S., R. 6 east, to one Wm. H. Grant, and that said grantee paid to said Wayne county at the time of their purchase a good and valuable consideration for each of said tracts, being the full and reasonable value thereof at the time of such purchase and conveyance, and that said purchaser and complainant, immediately after receiving the deed therefor from said county, entered into the actual possession of said tract and retained such open and notorious and adverse possession of
161 said tract, paying tax each and every year from 1863 to the commencement of this suit.

The court further finds that S. J. R. Wilson and T. M. Scott, judges of the county court of Wayne county, on the 20th day of April, 1859, executed a certain deed of trust, and also a mortgage of the same date, by two only of the three judges at what purported to be a special meeting of the county court without notice to the third, whereby it conveyed to Isaac Seymour, as a trustee, as a trust the said tracts of land hereinbefore described, together with many other tracts, to secure certain bonds of the Mount Vernon Railroad Company upon certain conditions and for certain purposes, hereinafter more fully set out.

That said county of Wayne was in nowise indebted to said railway company nor to any holder of its bonds nor to any one by reason of said bonds, nor was it liable in any way for their payment; but that the purport of the said trust deed and mortgage was to secure the building of said company's railway within and
162 through said county, upon the consideration that they, the Mount Vernon Railroad Company, had acquired by assignment a certain contract made by the county of Wayne to a certain firm named Vanduser, Smith & Co., whereby it was agreed that upon the performance of the certain undertaking on the part of Vanduser, Smith & Co. by the said railroad company the said lands should be liable under said trust deed and mortgage to the payment of said bonds and might become liens upon the said lands, and that the consideration and only consideration for the pretended execution of said trust deed by said county was the construction and completion of said railroad through said county as aforesaid under the said contract made with Vanduser, Smith & Co.; and the court further finds that no railroad or part of railroad was ever constructed, but was abandoned in August, 1860.

That one N. M. Broadwell, through whom defendant holds, and the defendant had actual knowledge of the want of consideration money for the county of Wayne to execute said mortgage, and

163 had also actual knowledge of the complete and utter failure of such consideration before they purchased said lands.

The court also further finds that on the 7th day of March, 1865, John W. Kennicott, together with certain other persons, all claiming to be holders and owners of the bonds of the said Mount Vernon Railway Company, filed their certain bill in chancery in the circuit court of the United States for the southern district of Illinois, impleading as defendants the said Mount Vernon Railroad Company and the said county of Wayne as defendants and as the only defendant thereto, and by various amendments thereafter had finally prayed the aid of the United States court to the end that the said trust deed and mortgage be declared a lien upon said lands in said trust deed described, including said land hereinbefore described as having been purchased from said county by complainant, Wm. H. Grant.

That such proceedings were had in said United States court in said cause that a decree was finally rendered therein at the June term, 1874, of said court declaring certain of said bonds of
164 said railway company produced in evidence to be liens on said lands by reason of said trust deed and mortgage and ordering the sale of the lands, including the lands of this complainant, by master in chancery of said United States circuit court, and the proceeds of such sale to be paid to the holders of said bonds of said railway company.

That under said decree John A. Jones, master in chancery of said United States court, on the 18th day of September, 1877, did so offer said lands for sale under said decree and reported that he had sold the same to R. P. Glenn, N. M. Broadwell, Stephen A. Goodwin, Samuel J. Crooks, and Isaac Taylor, not as individuals, but as trustees for the complainants in said decree.

That afterwards John A. Jones, master as aforesaid, after the term of fifteen months allowed by said decree for redemption of said lands from said decree to expire, executed and delivered to one N. M. Broadwell, who claimed to hold the certificate of such purchase by assignment, a deed purporting to convey said lands in said
165 trust deed mentioned, among them being the said tract belonging to this complainant as aforesaid, and that said Broadwell conveyed the same May 31st, 1879, being the lands of said complainant aforesaid, to Joseph W. Ward, the defendant herein, and that said deed from said master in chancery to said Broadwell was on the 27th day of May, 1879, filed for record in the office of the *office of the* circuit clerk and *ex officio* recorder of deeds in and for Wayne county, and appears now of record on pages 297 to 316, inclusive, in Book 38 of said deed record, and that said deeds from said N. M. Broadwell, Joseph W. Ward, was also filed in the same office for record, and appears now of record in said recorder's office on page 409, in Book 38 of said records.

And the court further finds that said complainant, William H. Grant, long before and at the time of the institution of said suit in chancery in the said United States court, was in the open, actual, and visible possession of said tracts of land in this cause involved and

was not a party nor privy defendant or otherwise to said suit in said United States court.

And the court further finds that said Mount Vernon Rail-
166 way Company did not nor did its assignees nor any one for it file a plat of the survey of the line of its road with the county court of said Wayne county, nor did its assignees or any one for it construct or build or cause to be constructed and built a railroad into or through said Wayne county. Wherefore it is adjudged and decreed by the court that the consideration for the execution of said trust deed and mortgage to Isaac Seymour by said Wayne county wholly and entirely failed, and that the said trust deed and mortgage so executed by S. J. R. Wilson and T. M. Scott was not the act of the county of Wayne, and that the county of Wayne had no power to execute the same and the same was null and void.

That Wm. H. Grant, not being a party to said decree in said United States court, whereon defendant in this case bases his title to the tracts in this cause in controversy, and having purchased such tract before the institution of the suit resulting in said decree, and being at the time of the institution of the suit and long before that in open, actual, and visible possession of said tracts of land,
167 is in nowise bound nor affected by said decree, nor was any lien by said decree legally or equitably fixed or established on his land in this case involved, and that the said deed from said master in chancery to said Broadwell and from said Broadwell to said defendant, Joseph W. Ward, so far as they purport to convey the title to said tracts, to wit, the southwest ¼ of the northeast ¼ sec. 27, town. 2 south, range 6 east, are inoperative and void and of no effect, and the same and each of them are declared to be clouds upon the title of complainant's land and are hereby cancelled of record and to be forever hereafter for naught esteemed. It is further ordered that the defendant pay the costs of this proceeding, to be fixed by the clerk of this court, and that execution and fee bill issue therefore as *proved* by law.

Approved.

(Signed) C. S. CONGER, *Judge.*

STATE OF ILLINOIS, } ss:
Wayne County, }

I, R. E. Mabry, clerk of the circuit court in and for said
168 county and State, do hereby certify that the foregoing is a true, perfect, and complete copy of a decree entered at the March term, A. D. 1884, of the Wayne county circuit court, wherein William H. Grant was plaintiff and Joseph W. Ward was defendant.

In testimony whereof I have hereunto set my hand and
[SEAL.] seal of said court, at my office, in Fairfield, this May 28th, A. D. 1884.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed June 2nd, 1884. J. A. Jones, clerk.

Plea & Answer of H. Kincart.

In Circuit Court United States, Southern Dist. Ills. June Term, 1884.

Fernando B. Hane, intervening in case of—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.* } Bill to Reforeclose a Mortgage.

The separate plea and answer of def't, H. Kincart, to complainant's bill of complaint.

169 This def't, to all the relief sought by the bill, and also to the discovery thereby sought, except the discovery sought by or in respect of so much of the said bill as prays that this defendant may answer and set forth whether the county of Wayne executed a deed and mortgage to the use of the Mt. V. R. R. Co., dated April 20th, 1859, to secure the payment of $800,000 of the bonds of the Mt. V. R. R. Co., and that this def't purchased of the county of Wayne only the equity of redemption to redeem from the said mortgage—this def't does plead in bar, and for plea says—

That on the — day of ——, 1880, this def't filed in the circuit court of Wayne county, Ills., his bill of complaint against Walter B. Scates to set aside his deed made and executed to him by N. M. Broadwell as a cloud on this def't's lands, to wit, S. W. N. W. sec. 17, town. 3 south, range 8 E., 3 P. M., being the lands described in the complainant's bill mentioned.

That the said Walter B. Scates appeared in the said cause, filing first a demur, and, after argument on the said demur, the
170 same being overruled, he filed a plea setting up his title by virtue of a decree obtained in a case entitled John W. Kennicott *et al. vs.* The Mt. V. R. R. Co., impleading the county of Wayne, at the June term, 1874, of this court, with a sale of the lands on the 18th of Sept., 1877, and by deed under the said sale, dated May 4, 1879, which plea was alike overruled, after which he filed an answer; whereupon this def't filed a replication, and after full proof was taken and argument of counsel the court entered a decree declaring his title was a cloud on the title of this def't's lands, as above described, and that the same were null and void, and which is more fully shown by said decree, which this def't here pleads in bar, a true copy of which is here attached, marked Ex. A, and made a part of this plea.

All of which matters and things this def't avers to be true and pleads the same to the whole of the said bill except such part of discovery thereby sought as aforesaid, and this def't prays the judgment of this honorable court whether he ought to be compelled to make any further or other answer to so much of the said bill
171 as is hereby pleaded to, and prays to be hence dismissed with his cost.

And, for answer to such parts of the said bill as are excepted by this def't, admits that he purchased the said land from the county of Wayne, but denies that he purchased only the equity of redemption, and avers that he purchased the legal title in fee under a power whereof the county of Wayne had the right and power to convey the fee, as is here shown by the following:

1st. The Congress of the United States duly passed an act—act approved Sept. 28th, 1850—entitled An act to enable the State of Arkansas and other States to redeem the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

2nd. The Legislature of the State of Illinois passed an act, approved by the Governor of said State on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and
172 pay the expenses of surveying and selecting the same, vesting the title to said lands in Wayne county.

And to so much of complainant's bill as sets up and alleges that the county of Wayne executed a trust deed and mortgage, dated April 20th, 1859, on the land now sought to be reforeclosed, this def't denies. He admits that S. J. R. Wilson and T. M. Scott, two of the county judges, did sign a pretended deed and mortgage, which was put of record, as charged; but def't denies that it was the act of the county of Wayne or by any power vested in the county of Wayne, but avers that it was done without any power existing for the county of Wayne to be bound thereby; that it was alone the act of S. J. R. Wilson and T. M. Scott, it being done out of any term of court, either general or special, without any notice to the other county judge, although he was residing and in the county.

And def't avers that there was no power either for the county of Wayne to aid the Mt. V. R. R. Co. nor for the R. R. Co. to secure the aid of the county by the so-called mortgage of the swamp
173 lands, as will appear by the said trust deed and mortgage upon their face.

Def't admits that certain parties, to the number of over forty, claim title or right under and by virtue of being successors or assigns of the Mt. V. R. R. Co., and, claiming to hold the bonds of the Mt. V. R. R. Co., went through a proceeding in this court and obtained a decree to sell the said land without def't being a party thereto, as set out in complainant's bill, and that deeds were made to parties pretending to purchase, and that this def't and many more did institute suit to set the same aside, as alleged in complainant's bill, which was commenced on the — day of ——, 1880, in the circuit court of Wayne county, it being for the October term of this court.

That a large number of suits were so commenced, being of like character; that the same and each was defended by said Walter B. Scates, the party def't therein, 1st by demur, then by plea, then by answer, and full evidence taken.

That the said court, at the Oct. term, 1881, in the case of Preston

R. King *vs.* Scates, one of the same class, decreed that the
174 said Scates' title so obtained with his deeds of record were null and void and were a cloud on the title of this def't.

Whereupon the said Walter B. Scates took an appeal to the supreme court of the State of Ills., and by an agreement all other cases (among which was the case of the def't *vs.* said Scates) were held in abeyance until the same was passed upon.

That the supreme court approved the decision of the lower court, which decision is now reported and published in Freeman's advance sheets of Ills. reports, which is made a part of this answer.

That this def't had so instituted a suit, which was held in abeyance until the supreme court of the State of Ills. should so pass upon the case of P. R. King *vs.* Walter B. Scates.

That at the March term, 1884, of the said Wayne county court the def't's case *vs.* Walter B. Scates, involving the S. W. N. W. section 17, town. 3 south, 8 E., 3 P. M., was taken up and a decree rendered in said cause decreeing that the consideration for the execution of the said mortgage and trust deed totally and wholly failed.

175 That the act of S. J. R. Wilson and T. M. Scott in executing the said deed and mortgage was not the act of the county of Wayne.

That the county of Wayne had no power to execute a mortgage to the use of the Mt. V. R. R. Co., and that they were and are null and void and a cloud on the title of this def't, and decreed that *the* they and all title thereupon acquired be cancelled of record.

That said suits were pending in said court long before the said complainant, F. B. Hane, claims to have acquired title to the said land by purchase of the said Walter B. Scates.

And this def't, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and prays the same advantage of this answer as if he had pleaded or demurred to the said bill of complaint, and prays a severance from other def'ts in this cause, and to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

H. TOMPKINS,
Resp't's Sol'r.

176 EXHIBIT "A" to Plea of H. Kincart.

STATE OF ILLINOIS, } *ss:*
Wayne County, }

Wayne County Circuit Court, to March Term, A. D. 1884.

HENRY KINCART } Bill to Remove Cloud from Title.
vs.
WALTER B. SCATES. }

This cause having been submitted to this court for decision at its March term, 1884, it being the 5th day of April, 1884, and being

the 10th day of the term, on the bill, answer, replication, exhibits, and proof, both oral and documentary and in depositions, with stipulations and agreements of counsel, and having been fully considered by the court, and the court, now being fully advised in the premises, finds—

That the county of Wayne, in the State of Illinois, being the owner of the lands in this cause involved, described as follows, to wit, the southwest quarter of the northwest quarter section seventeen, town. 3 south, range eight east, in said Wayne county, Illinois, on the 19th day of December, 1863, the said county of Wayne
177 sold and conveyed said S. W. N. W. sec. 17, T. 3 S., R. 8 east, to one William White, and the deed to him was filed for record and recorded in Book 32, page 517, of Wayne County Records; that he, on the 21st day of Nov., 1870, sold and conveyed the same to the complainant, and that said grantee paid to said Wayne county at the time of his purchase a good and valuable consideration for each of said tracts, being the full and reasonable value thereof at the time of such purchase and conveyance, and that said purchaser and complainant, immediately after receiving the deed therefor from said county, entered into the actual possession of said tract and retained such open and notorious and adverse possession of said tract, paying tax each and every year from 1870 to 1881, to the commencement of this suit.

The court further finds that S. J. R. Wilson and T. M. Scott, judges of the county court of Wayne county, on the 20th day of April, 1859, executed a certain deed of trust, and also a mortgage of the same date, by two only of the three judges at what purported to be a special meeting of the county court without notice to the
178 third, whereby it conveyed to Isaac Seymour, as a trustee, as a trust the said tracts of land hereinbefore described, together with many other tracts, to secure certain bonds of the Mount Vernon Railroad Company upon certain conditions and for certain purposes, hereinafter more fully set out.

That said county of Wayne was in nowise indebted to said railway company nor to any holder of its bonds nor to any one by reason of said bonds, nor was it liable in any way for their payment; but that the purport of the said trust deed and mortgage was to secure the building of said company's railway within and through said county upon the consideration that they, the Mount Vernon Railroad Company, had acquired by assignment a certain contract made by the county of Wayne and a certain firm named Vanduser, Smith & Co., whereby it was agreed that upon the performance of the certain undertaking on the part of Vanduser, Smith & Co. by the said railway company the said lands should be liable under said trust deed and mortgage to the payment of said bonds and might become liens upon the said lands, and that the consideration
179 and only consideration for the pretended execution of said trust deed by said county was the construction and completion of said railroad through said county as aforesaid under the said contract made with Vanduser, Smith & Co.; and the court

further finds that no railroad or part of railroad was ever constructed, but was abandoned in August, 1860.

That one N. M. Broadwell, through whom defendant holds, and the defendant had actual knowledge of the want of consideration money for the county of Wayne to execute said mortgage, and had also actual knowledge of the complete and utter failure of such consideration before they purchased said lands.

The court also further finds that on the 7th day of March, 1865, John W. Kennicott, together with certain other persons, all claiming to be holders and owners of the bonds of the said Mount Vernon Railway Company, filed their certain bill in chancery in the circuit court of the United States for the southern district of Illinois, impleading as defendants the said Mount Vernon Railroad
180 Company and the said county of Wayne as defendants and as the only defendant thereto, and by various amendments thereafter had finally prayed the aid of said United States court to the end that the said trust deed and mortgage be declared a lien upon said lands in said trust deed described, including said lands hereinbefore described as having been purchased from said county by complainant and his grantor.

That such proceedings were had in said United States court in said cause that a decree was finally rendered therein at the June term, 1874, of said court declaring certain of said bonds of said railway company produced in evidence to be liens on said lands by reason of said trust deed and mortgage and ordering the sale of the lands, including the lands of this complainant, by master in chancery of said United States circuit court, and the proceeds of such sale to be paid to the holders of said bonds of said railway company.

That under said decree John A. Jones, master in chancery of said United States court, on the 18th day of September, 1877, did
181 so offer said lands for sale under said decree and reported that he had sold the same to R. P. Glenn, N. M. Broadwell, Stephen A. Goodwin, Samuel J. Crooks, and Isaac Taylor, not as individuals, but as trustees for the complainants in said decree.

That afterwards John A. Jones, master as aforesaid, after the term of fifteen months allowed by said decree for redemption of said lands from said decree to expire, executed and delivered to one N. M. Broadwell, who claimed to hold the certificate of such purchase by assignment, a deed purporting to convey said lands in said trust deed mentioned, among them being the said tract belonging to this complainant as aforesaid, and that said Broadwell conveyed the same to Walter B. Scates May 31st, 1879, which deed is recorded in Book 38, page 350, it being the lands of said complainant, and that said deed from said master in chancery to said Broadwell was on the 27th day of May, 1879, filed for record in the office of circuit clerk and *ex officio* recorder of deeds in and for Wayne county, and appears now of record on pages 297 to 316, inclusive, in Book 38 of said deed record, and among which land so described is included the complainant'-.

182 And the court further finds that said complainant, Henry Kincart, long before and at the time of the institution of said

suit in chancery in the said United States court, was in the open, actual, and visible possession of said tracts of land in this cause involved, and was not a party nor privy defendant or otherwise to said suit in said United States court.

And the court further finds that said Mount Vernon Railway Company did not nor did its assignees nor any one for it file a plat of the survey of the line of its road with the county court of said Wayne county, nor did its assignees or any one for it construct or build, or cause to be constructed and built, a railroad into or through said Wayne county.

Wherefore it is adjudged and decreed by the court that the consideration for the execution of said trust deed and mortgage to Isaac Seymour by said Wayne county wholly and entirely failed, and that the said trust deed and mortgage so executed by S. J. R. Wilson and T. M. Scott was not the act of the county of Wayne; neither
183 had the county any power to execute the same, and that they were null and void.

That Henry Kincart, not being a party to said decree in said United States court, whereon defendant in this case bases his titles to the tracts in this cause in controversy, and having purchased such tracts before the institution of the suit resulting in said decree, and being at the time of the institution of the suit and long before that in open, actual, and visible possession of said tracts of land, is in nowise bound nor affected by said decree, nor was any lien by said decree legally or equitably fixed or established on his land in this cause involved, and that the said deed from said master in chancery to said Broadwell and from said Broadwell to said defendant, Walter B. Scates, so far as they purport to convey the title to said tracts, to wit, the southwest ¼ of northwest ¼ sec. 17, town. three south, range 8 east, are inoperative and void and of no effect, and the same and each of them are declared to be clouds upou the title of complainant's land, and are hereby cancelled of record, and to be forever hereafter for naught esteemed.

184 It is further ordered that the defendant pay the costs of this proceeding, to be fixed by the clerk of this court, and that execution and fee bill issue therefore as prov'ed by law.

Approved.

C. S. CONGER, *Judge.*

STATE OF ILLINOIS, } ss:
Wayne County, }

I, R. E. Mabry, clerk of the circuit court in and for the county of Wayne and State of Illinois, do hereby certify that the foregoing is a true, perfect, and complete copy of a decree obtained at the March term of the Wayne county circuit court, A. D. 1884, wherein Henry Kincart was plaintiff and Walter B. Scates was defendant.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of said court, at my office, in Fairfield, this May 27th, A. D. 1884.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed June 2d, 1884. J. A. Jones, clerk.

185 *Plea and Answer of Hiram Tucker.*

In Circuit Court United States, Southern District Ills. June Term, 1884.

FERNANDO B. HANE
v.
J. J. BURHAM *et al.*

Intervening in suit—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH.

Bill to Reforeclose a Mortgage.

The separate plea and answer of def't, Hiram Tucker, to complainant's bill of complaint.

This def't, to all the relief sought by the bill and also to the discovery thereby sought, except the discovery sought by or in respect of so much of the said bill as prays that this def't may answer and set forth whether the county of Wayne executed a deed and mortgage to the use of the Mt. V. R. R. Co., dated April 20th, 1859, to secure the payment of $800,000 of the bonds of the Mt. V. R. R. Co., and that this def't purchased of the county of Wayne only the
186 equity of redemption to redeem from the said mortgage, this def't does plead in bar, and for plea says—

That on the — day of ——, 1880, this def't filed in the circuit court of Wayne county, Ills., his bill of complaint against Walter B. Scates to set aside his deed made and executed to him by Maria J. Meyers as a cloud on this def't's lands, to wit, the west half northwest q'r, sec. 7, T. 3 S., R. 8 east, being the lands described in the complainant's bill mentioned.

That the said Walter B. Scates appeared in the said cause, filing first a demur, and, after argument on the said demur, the same being overruled, he filed a plea setting up his title by virtue of a decree obtained in a case entitled John W. Kennicott *et al. vs.* The County of Wayne, at the June term, 1874, of this court, with a sale of the lands on the 18th day of Sept., 1877, and by deed under the said sale, dated the 31st day of May, 1879, which plea was alike overruled, after which he filed an answer; whereupon this def't filed a replication, and after full proof was taken and argument of counsel, the court entered a decree declaring his title was a cloud on
187 the title of this def't's land, as above described, and that the same were null and void, and which is more fully shown by said decree, which this def't here pleads in bar, a true copy of which is here attached, marked Ex. A, and made a part of this plea.

All of which matters and things this def't avers to be true, and pleads the same to the whole of the said bill, except such part of discovery thereby sought as aforesaid, and this defendant prays the judgment of this honorable court whether he ought to be compelled

to make any further or other answer to so much of the said bill as is hereby pleaded to, and prays to be hence dismissed with his cost.

And, for answer to such parts of the said bill as are excepted by this def't, admits that he purchased the said land from the county of Wayne, but denies that he purchased only the equity of redemption, and avers that he purchased the legal title in fee under a power, whereof the county of Wayne had the right and power to convey the fee, as is here shown by the following:

188 1st. The Congress of the United States duly passed an act—act approved Sept. 28th, 1850—entitled An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

2nd. The Legislature of the State of Illinois passed an act approved by the Governor of said State on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and pay the expenses of surveying and selecting the same, and vesting the title to said lands in Wayne county.

And to so much of complainant's bill as sets up and alleges that the county of Wayne executed a trust deed and mortgage dated April 20th, 1859, on the land now sought to be reforeclosed this def't denies.

189 He admits that S. J. R. Wilson and T. M. Scott, two of the county judges, did sign a pretended deed and mortgage, which was put of record, as charged.

But def't denies that it was the act of the county of Wayne or by any power vested in the county of Wayne.

But avers that it was done without any power existing for the county of Wayne to be bound; that it was thereby alone the act of S. J. R. Wilson and T. M. Scott, it being done out of any term of court, either general or special, without any notice to the other county judge, although he was residing and in the county.

And def't avers that there was no power either for the county of Wayne to aid the Mt. V. R. R. Co. *nor* for the R. R. Co. to secure the aid of the county by the so-called mortgage of the swamp lands, as will appear by the said trust deed and mortgage upon their face.

Def't admits that certain parties, to the number of over forty, claim title or right under and by virtue of being successors or assignees of the Mt. V. R. R. Co. and, claiming to hold the lands of the Mt. V. R. R. Co., went through a proceeding in this court and obtained

190 a decree to sell the said land without def't being a party thereto, as set out it complainant's bill, and that deeds were made to parties pretending to purchase, and that this def't and many more did institute suit to set the same aside, as alleged in complainant's bill, which was commenced on the — day of ——, 1880, in the circuit court of Wayne county, it being for the Oct. term of that court.

That a large number of suits were so commenced, being of like

character; that the same and each was defended by said Walter B. Scates, the party def't therein—1st, by demur, then by plea, then by answer, and full evidence taken; that the said court, at the Oct. term, 1881, in the case of Preston R. King *vs.* Scates, one of the same class, decreed that said Scates' title so obtained, with his deeds of record, were null and void and were a cloud on the title of this def't.

Whereupon the said Walter B. Scates took an appeal to the supreme court of the State of Illinois, and by agreement all other cases, among which was the case of the def't *vs.* said Scates,
191 were held in abeyance until the same was passed upon, which agreement is here shown the court.

That said supreme court affirmed the decision of the lower court, which decision is now reported and published in Freeman's advance sheets of Ills. Reports, which is made a part of this answer.

That this def't had so instituted a suit, which was held in abeyance until the supreme court of the State of Ills. should pass upon the case of P. R. King *vs.* Walter B. Scates.

That at the March term, 1884, of the said Wayne county court the defendant's case *vs.* Walter B. Scates, involving the west half of the northwest quarter sec. seven, town. 3 S., R. 8 east, was taken up and decree rendered in said cause decreeing that the consideration for the execution of the said mortgage and trust deed totally and wholly failed.

That the act of S. J. R. Wilson and T. M. Scott in executing the said deed and mortgage was not the act of the county of Wayne.

192 That the county of Wayne had no power to execute a mortgage to the use of the Mt. V. R. R. Co. and they were and are null and void and a cloud on the title of this def't, and decreed that they and all title thereat acquired be cancelled of record.

That some suits were pending in said court long before the said complainant, F. B. Hane, claimed to have acquired title to the said land by purchase of the said Walter B. Scates.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill of complaint, and prays a severance from other def't- in this cause, and to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HIRAM TUCKER.

H. TOMPKINS,
Resp't's Sol.

WAYNE COUNTY, } *ss:*
State of Ills., }

Personally appeared before me this 28th day of May, 1884,
193 Hiram Tucker, the defendant in the above cause, and being duly sworn, says that the above plea in the said cause is true wherein it states facts, and wherein it states on information and belief he believes the same to be true.

[SEAL.]

JOHN S. HANDLEY,
Master in Chancery.

EXHIBIT "A" to Plea of Hiram Tucker.

STATE OF ILLINOIS, } ss:
Wayne County, }

Wayne County Circuit Court, to March Term, A. D. 1884.

HIRAM TUCKER
vs.
WALTER B. SCATES. } Bill to Remove Cloud from Title.

This cause having been submitted to this court for decision at its March term, 1884, it being on the 5th day of April, 1884, and being the tenth day of said term, on the bill, answer, replication, exhibits, and proof, both oral, documentary and in depositions, with stipulations and agreement of counsel, and having been carefully considered by the court, and the court, now being fully advised in the premises, finds—

194 That the county of Wayne, in the State of Illinois, being the owner of the lands in this case involved, described as follows, to wit, the west half of the northwest quarter, section seven, all in town. 3 S., R. 8 east, in said Wayne county, Illinois—

And on the 13th day of December, 1862, the said county of Wayne sold and conveyed said W. ½ N. W. sec. 7, T. 3 S., R. 8 east, to one Fielden Herld, and the deed to him was filed for record and recorded in Book Y, page 504, of Wayne county records, and on the 29th day of December, 1862, Fielden Herld and wife sold and conveyed the same to Hiram Tucker, the complainant, which deed is recorded in Book O, page 228; and that said grantee paid to said Wayne county at the time of their purchase a good and valuable consideration for each of said tracts, being the full and reasonable value thereof at the time of such purchase and conveyance, and that said purchaser and complainant, immediately after receiving the deed therefor from said county, entered into the actual possession of said tract and retained such open and notorious and adverse pos-

195 session of said tract, paying all tax each and every year from 1862 to the commencement of their suit.

The court further finds that S. J. R. Wilson and T. M. Scott, judges of the county court of Wayne county, on the 20th day of April, 1859, executed a certain deed of trust, and also a mortgage of the same date, by two only of the three judges, at what purported to be a special meeting of the county court, without notice to the third, whereby it conveyed to Isaac Seymour, as a trustee, as a trust, the said tracts of land hereinbefore described, together with many other tracts, to secure certain bonds of the Mount Vernon Railroad Company, upon certain conditions and for certain purposes hereinafter more fully set out.

That said county of Wayne was in nowise indebted to said railway company, nor to any holder of its bonds, nor to any one by reason of said bonds, nor was it liable in any way for their payment; but

that the purport of the said trust deed and mortgage was to secure the building of said company's railway within and through said county, upon the consideration that they, the Mount Vernon
196 Railroad Company, had acquired by assignment a certain contract made by the county of Wayne and a certain firm named Vanduser, Smith & Co., whereby it was agreed that upon the performance of the certain undertaking on the part of Vanduser, Smith & Co. by the said railway company the said lands should be liable under said trust deed and mortgage to the payment of said bonds and might become liens upon the said lands, and that the consideration and only consideration for the pretended execution of said trust deed by said county was the construction and completion of said railroad through said county as aforesaid under the said contract made with Vanduser, Smith & Co.; and the court further finds that no railroad or part of railroad was ever constructed, but was abandoned in August, 1860.

That one N. M. Broadwell, through whom defendant holds, and the defendant had actual knowledge of the want of consideration money for the county of Wayne to execute said mortgage, and had also actual knowledge of the complete and utter failure
197 of such consideration before they purchased said lands.

The court also further finds that on the 7th day of March, 1865, John W. Kennicott, together with certain other persons, all claiming to be holders and owners of the bonds of the said Mount Vernon Railway Company, filed their certain bill in chancery in the circuit court of the United States for the southern district of Illinois, impleading as defendants the said Mount Vernon Railroad Company and the said county of Wayne as defendants and as the only defendant thereto, and, by various amendments thereafter had, finally prayed the aid of said United States court to the end that the said trust deed and mortgage be declared a lien upon said lands in said trust deed described, including said land hereinbefore described, as having been purchased from said county by complainant and his grantor.

That such proceedings were had in said United States court in said cause that a decree was finally rendered therein at the June term, 1874, of said court declaring certain of said bonds of said
198 railway company produced in evidence to be liens on said lands by reason of said trust deed and mortgage, and ordering the sale of the lands, including the lands of this complainant, by master in chancery of said United States circuit court, and the proceeds of such sale to be paid to the holders of said bonds of said railway company.

That under said decree John A. Jones, master in chancery of said United States court, on the 18th day of September, 1877, did so offer said lands for sale under said decree and reported that he had sold the same to R. P. Glenn, N. M. Broadwell, Stephen A. Goodwin, Samuel J. Crooks, and Isaac Taylor, not as individuals, but as trustees for the complainants in said decree.

That afterwards John A. Jones, master as aforesaid, after the term of fifteen months allowed by said decree for redemption of said lands

from said decree to expire, executed and delivered to one N. M. Broadwell, who claimed to hold the certificate of such purchase by assignment, a deed purporting to convey said lands in said
199 trust deed mentioned, among them being the said tract belonging to this complainant as aforesaid, and that said Broadwell conveyed the same May 31st, 1879, to Maria J. Meyers, and said Maria J. Meyers conveyed the same, *to* being the lands of said complainant aforesaid, to Walter B. Scates, the defendant herein, and that said deed from said master in chancery to said Broadwell was, on the 27th day of May, 1879, filed for record in the office of the circuit clerk and *ex officio* recorder of deeds in and for Wayne county, and appear- now of record on pages 297 to 316, inclusive, in Book 38 of said deed record, and that said deeds from said Broadwell to Meyers and from Meyers to Walter B. Scates was also filed in the same office for record, and now appears of record in said recorder's office, the one at page 20 and the other at page 128, both in Book 39 of said records.

And the court further finds that said complainant, Hiram Tucker, long before and at the time of the institution of said suit in chancery in the said United States court, was in the open, actual, and
200 visible possession of said tracts of land in this cause involved and was not a party nor privy defendant or otherwise to said suit in said United States court.

And the court further finds that said Mount Vernon Railway Company did not nor did its assignees nor any one for it file a plat of the survey of the line of its road with the county court of said Wayne county, nor did its assignees or any one for it construct or build or cause to be constructed and built a railroad into or through said Wayne county.

Wherefore it is adjudged and decreed by the court that the consideration for the execution of said trust deed and mortgage to Isaac Seymour by said Wayne county wholly and entirely failed, and that the said trust deed and mortgage so executed by S. J. R. Wilson and T. M. Scott is not the act of the county of Wayne, and that Wayne county had no power to execute the same, and that the same is null and void; that Hiram Tucker, not being a party to said decree in said United States court, whereon defendant in this
201 case bases his title to the tracts in this cause in controversy, and having purchased such titles before the institution of the suit resulting in said decree, and being at the time of the institution of the suit and long before that in open, actual, and visible possession of said tracts of land, is in nowise bound nor affected by said decree, nor was any lien by said decree legally or equitably fixed or established on his land in this cause involved, and that the said deed from said master in chancery to said Broadwell and from said Broadwell to said defendant, Maria J. Meyers, and from said M. J. Meyers to def't, so far as they purport to convey the title to said tracts, to wit, the W. ½ N. W. sec. 7, T. 3 S., R. 8 east, are inoperative and void and of no effect, and the same and each of them are declared to be clouds upon the title of complainant's land and

are hereby cancelled of record and to be forever hereafter for naught esteemed.

It is further ordered that the defendant pay the costs of this proceeding, to be fixed by the clerk of this court, and that execu-
202 tion and fee bill issue therefore as *proved* by law.

Approved.

C. S. CONGER, *Judge.*

STATE OF ILLINOIS, } ss:
County of Wayne, }

I, R. E. Mabry, clerk of the circuit court in and for said county and State, do hereby certify that the foregoing is a true, perfect, and complete copy of a decree rendered at the March term, A. D. 1884, of the Wayne county circuit court, wherein Hiram Tucker was plaintiff and Walter B. Scates was defendant.

In testimony whereof I have hereunto set my — and
[SEAL.] affixed the seal of said court, at my office, in Fairfield, this May 27th, A. D. 1884.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed June 2nd, 1884. J. A. Jones, clerk.

203 *Plea and Answer of Wm. Maberry.*

In Circuit Court United States, Southern District Ills., June Term, 1884.

FERNANDO B. HANE
v.
WM. MABERY.

Intervenes in case of—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH. } Bill to Reforeclose a Mortgage.

The separate plea and answer of def't to complainant's bill of complaint.

This def't, to all the relief sought by the bill, and also to the discovery thereby sought, except the discovery sought by or in respect of so much of the said bill as prays that this def't may answer and set forth whether the county of Wayne executed a deed and mortgage to the use of the Mt. V. R. R. Co., dated April 20th, 1859, to secure the payment of $800.000 of the bonds of the Mt. V. R. R. Co., and that this def't purchased of the county of Wayne only the equity of redemption to redeem from the said mortgage—

This def't does plead in bar, and for plea says—

204 That on the — day of ——, 1880, this def't filed in the circuit court of Wayne county, Ills., his bill of complaint against

Joseph W. Ward to set aside his deed made and executed to him by N. M. Broadwell as a cloud on this def't- lands, to wit, the N. W. ¼ of S. E. ¼ sec. 4, town. 3 south, 6 east, being the lands described in the complainant's bill mentioned.

That Walter B. Scates appeared in the said cause as att'y for said Joseph W. Ward, filing first a demur, and, after argument on the said demur, the same being overruled, he filed a plea setting up his title by virtue of a decree obtained in a case entitled John W. Kennicott *et al. vs.* The County of Wayne, at the June term, 1874, of this court, with a sale of the lands on the 18th day of Sept., 1877, and by deed under the said sale, dated the 31st day of May, 1879, which plea was alike overruled, after which he filed an answer; whereupon this def't filed a replication, and after full proof was taken and argument of counsel—

The court entered a decree declaring his title was a cloud on the title of this def't- land, as above described, and that the
205 same were null and void, and which is more fully shown by said decree, which this def't here pleads in bar, a true copy of which is here attached, marked Ex. A, and made a part of this plea.

All of which matters and things this def't avers to be true, and pleads the same to the whole of the said bill except such part of discovery thereby sought as aforesaid; and this def't prays the judgment of this honorable court whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and prays to be hence dismissed with his cost.

And, for answer to such parts of the said bill as are excepted by this def't, he admits that he purchased the said land from the county of Wayne, but denies that he purchased only the equity of redemption, and avers that he purchased the legal title in fee under a power whereof the county of Wayne had the right and power to convey the fee, as is here shown by the following:

1st. The Congress of the United States duly passed an act—
206 act approved Sept. 28th, 1850—entitled An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

2nd. The Legislature of the State of Illinois passed an act, approved by the Governor of said State on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and pay the expenses of surveying and selecting the same, vesting the title of said lands in Wayne county.

And to so much of complainant's bill as sets up and alleges that the county of Wayne executed a trust deed and mortgage, dated April 20th, 1859, on the lands now sought to be reforeclosed, this def't denies.

He admits that S. J. R. Wilson and T. M. Scott, two of the county judges, did sign a pretended deed and mortgage, which was put of record, as charged.

207 But def't denies that it was the act of the county of Wayne or by any power vested in the county of Wayne, but avers that it was done without any power existing for the county of Wayne to be bound; that it was thereby alone the act of S. J. R. Wilson and T. M. Scott, it being done out of any term of court, either general or special, without any notice to the other county judge, although he was residing in the county.

And def't avers that there was no power either for the county of Wayne to aid the Mt. V. R. R. Co. nor for the R. R. Co. to secure the aid of the county by the so-called mortgage of the swamp lands, as will appear by the said trust deed and mortgage upon their face.

Def't admits that certain parties, to the number of over forty, claim title or right under and by virtue of being successors or assignees of the Mt. V. R. R. Co., and, claiming to hold the bonds of the Mt. V. R. R. Co., went through a proceeding in this court and obtained a decree to sell the said land without def't being a party thereto, as set out in complainant's bill, and that deeds were
208 made to parties pretending to purchase, and that this def't and many more did institute suit to set aside the same, as alleged by complainant's bill, which was commenced on the — day of ——, 1880, in the circuit court of Wayne county, it being for the Oct. term of that court.

That a large number of suits were so commenced, being of like character.

That the same and each was defended by said Walter B. Scates, as att'y for the party def't therein—

1st by demur, then by plea, then by answer, and finally by full evidence taken.

That the said court, at the Oct. term, 1881, in the case of Preston R. King *vs.* Walter B. Scates, one of the same class, decreed that said Scates' title so obtained with his deeds of record were null and void and were a cloud on the title of this def't.

Whereupon the said Walter B. Scates took an appeal to the supreme court of the State of Illinois, and by agreement all other cases, among which was the case of the def't *vs.* said Scates, were held in abeyance until the same was passed upon.

209 That said supreme court affirmed the decision of the lower court, which decision is now reported and published in Freeman's advance sheets of Ills. Reports, which is made a part of this answer.

That this def't had so instituted a suit, which was held in abeyance until the supreme court of the State of Ills. should so pass upon the case of P. R. King *vs.* Walter B. Scates.

That at the March term, 1884, of the said Wayne county court the def't- case *vs.* Joseph W. Ward, involving the N. W. ¼ of S. E. ¼ sec. 4, town. 3 south, 6 east, was taken up and decree rendered in said cause decreeing that the consideration for the execution of the said mortgage and trust deed totally and wholly failed.

That the act of S. J. R. Wilson and T. M. Scott in executing the said deed and mortgage was not the act of the county of Wayne.

That the county of Wayne had no power to execute a mortgage

to the use of the Mt. V. R. R. Co., and they were and are null and void and a cloud on the title of this def't, and decreed that they and all title thereat acquired be cancelled of record.

210 That same suits were pending in said court long before the said complainant, F. B. Hane, claimed to have acquired title to the said land by purchase of the said Walter B. Scates as att'y for Joseph W. Ward.

And this def't, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill of complaint, and prays a severance from other def't- in this cause, and to be dismissed with his reasonable cost and charges in this behalf most wrongfully sustained.

WM. MABRY,
Per H. TOMPKINS,
Att'y for Compl't.

STATE OF ILL., }
Wayne County, } *ss:*

I, Wm. Mabry, the def't in the above cause, have heard the foregoing plea read, and, being duly sworn, says the same is true wherein it purports to state matter as fact, and where on information and belief he believes the same to be true.

WM. MABRY.

Sworn to and subscribed before me this May 23rd, A. D. 1884.
JAMES H. TROTTER,
Justice of the Peace.

211 EXHIBIT "A" to Plea of Wm. Mabry.

STATE OF ILLINOIS, }
Wayne County, } *ss:*

Wayne County Circuit Court, to March Term, A. D. 1884.

WM. MABRY }
v. } Bill to Remove Cloud from Title.
JOSEPH W. WARD. }

This cause having been submitted to this court for decision at its March term, 1884, it being the 5th day of April, 1884, and being the 10 day of the term, on the bill, answer, replication, exhibits, and proof, both oral and documentary and in depositions, with stipulations and argument of counsel, and having been fully considered by the court, and the court, now being fully advised in the premises, finds—

That the county of Wayne, in the State of Illinois, being the owner of the lands in this cause involved, described as follows, to wit, the northwest q'r of the southeast quarter section four, all in town. 3 S., R. 6 east, in said Wayne county, Illinois—

And on the 27th day of February, 1864, the said county of

Wayne sold and conveyed said N. W. S. E. sec. 4, T. 3 S.,
212 R. 6 E., to one William Mabry, the complainant, by deed in fee, and that said grantee paid to said Wayne county at the time of his purchase a good and valuable consideration for each of said tracts, being the full and reasonable value thereof at the time of such purchase and conveyance, and that said purchaser and complainant, immediately after receiving the deed therefor from said county, entered into the actual possession of said tract and retained such open and notorious and adverse possession of said tract, *until* paying taxes each and every year since 1864 to the commencement of this suit.

The court further finds that S. J. R. Wilson and T. M. Scott, judges of the county court of Wayne county, on the 20th day of April, 1859, executed a certain deed of trust, and also a mortgage of the same date, by two only of the three judges at what purported to be a special meeting of the county court without notice to the third, whereby it conveyed to Isaac Seymour, as a trustee, as a trust the said tracts of land hereinbefore described, together with many other tracts, to secure certain bonds of the Mount Vernon Railroad
213 Company upon certain conditions and for certain purposes, hereinafter more fully set out.

That said county of Wayne was in nowise indebted to said railway company nor to any holder of its bonds nor to any one by reason of said bonds nor was it liable in any way for their payment, but that the purport of the said trust deed and mortgage was to secure the building of said company's railway within and through said county upon the consideration that they, the Mount Vernon Railroad Company, had acquired by assignment a certain contract made by the county of Wayne and a certain firm named Vanduser, Smith & Co., whereby it was agreed that upon the performance of the certain undertaking on the part of Vanduser, Smith & Co. by the said railway company the said lands should be liable under said trust deed and mortgage to the payment of said bonds and might become liens upon the said lands, and that the consideration and only consideration for the pretended execution of said trust deed by said county was the construction and completion of said
214 railroad through said county as aforesaid under the said contract made with Vanduser, Smith & Co.; and the court further finds that no railroad or part of railroad was ever constructed, but was abandoned in August, 1860.

That one N. M. Broadwell, through whom defendant holds, and the defendant had actual knowledge of the want of consideration money for the county of Wayne to execute said mortgage, and had also actual knowledge of the complete and utter failure of such consideration before they purchased said lands.

The court also further finds that on the 7th day of March, 1865, John W. Kennicott, together with certain other persons, all claiming to be holders and owners of the bonds of the said Mount Vernon Railway Company, filed their certain bill in chancery in the circuit court of the United States for the southern district of Illinois, impleading as defendants the said Mount Vernon Railroad Company

and the said county of Wayne as defendants and as the only defendant thereto, and by various amendments thereafter had finally prayed the aid of said United States court to the end that
215 the said trust deed and mortgage be declared a lien upon said lands in said trust deed described, including the said land hereinbefore described as having been purchased from said county by complainant, Wm. Mabry.

That such proceedings were had in said United States court in said cause that a decree was finally rendered therein at the June term, 1874, of said court declaring certain of said bonds of said railway company, produced in evidence, to be liens on said lands by reason of said trust deed and mortgage and ordering the sale of the lands, including the lands of this complainant, by master in chancery of said United States circuit court, and the proceeds of such sale to be paid to the holders of said bonds of said railway company.

That under said decree John A. Jones, master in chancery of said United States court, on the 18th day of September, 1877, did so offer said lands for sale under said decree and reported that he had sold the same to R. P. Glenn, N. M. Broadwell, Stephen A. Goodwin, Samuel J. Crooks, and Isaac Taylor, not as individuals, but
216 as trustees for the complainants in said decree; that afterwards John A. Jones, master as aforesaid, after the term of fifteen months allowed by said decree for redemption of said lands from said decree to expire, executed and delivered to one N. M. Broadwell, who claimed to hold the certificate of such purchase by assignment, a deed purporting to convey said lands in said trust deed mentioned, among them being the said tract belonging to this complainant as aforesaid, and that said Broadwell conveyed the same May 31st, 1879, being the lands of said complainant aforesaid, to Joseph W. Ward, the defendant herein, and that said deed from said master in chancery to said Broadwell was, on the 27th day of May, 1879, filed for record in the office of circuit clerk and *ex officio* recorder of deeds in and for Wayne county and appears now of record on pages 297 to 316, inclusive, in Book 38 of said Deed Record, and *and* that said deeds from said N. M. Broadwell to Joseph W. Ward was also filed in the same office for record and appears now of record in said recorder's office on page 409, in Book 38 of said records.

217 And the court further finds that said complainant, William Mabry, long before and at the time of the institution of said suit in chancery in the said United States court, was in the open, actual, and visible possession of said tracts of land in this cause involved and was not a party nor privy defendant or otherwise to said suit in said United States court.

And the court further finds that said Mount Vernon Railway Company did not nor did its assignees nor any one for it file a plat of the survey of the line of its road with the county court of said Wayne county, nor did its assignees or any one for it construct or build or cause to be constructed and built a railroad into or through said Wayne county.

Wherefore it is adjudged and decreed by the court that the con-

sideration for the execution of said trust deed and mortgage to Isaac Seymour by said Wayne county wholly and entirely failed, and that the said trust deed and mortgage so executed by S. J. R. Wilson and T. M. Scott is not the act of the county of Wayne, and
218 that Wayne county had no power to execute the same, and that the same is null and void.

That Wm. Mabry, not being a party to said decree in said United States court, whereon defendant in this case bases his titles to the tracts in this cause in controversy, and having purchased such tracts before the institution of the suit resulting in said decree, and being at the time of the institution of the suit and long before that in open, actual, and visible possession of said tracts of land, is in nowise bound nor affected by said decree nor was any lien by said decree legally or equitably fixed or established on his land in this cause involved, and that the said deed from said master in chancery to said Broadwell and from said Broadwell to said defendant, Joseph W. Ward, so far as they purport to convey the title to said tracts, to wit, the northwest of the southeast ¼ section 4, town. 3 south, range 6, are inoperative and void and of no effect, and the same and each of them are declared to be clouds upon the title of complainant's land and are hereby cancelled of record and to be forever hereafter for naught esteemed.

219 It is further ordered that the defendant pay the costs of this proceeding, to be fixed by the clerk of this court, and that execution and fee bill issue therefore as *proved* by law.

Approved.

C. S. CONGER, *Judge.*

STATE OF ILLINOIS, }
Wayne County. }

I, R. E. Mabry, clerk of the circuit court in and for said county and State, do hereby certify that the foregoing is a true, perfect, and complete copy of a decree rendered at the March term, A. D. 1884, of the Wayne county circuit —, wherein William Mabry was plaintiff and Joseph W. Ward was defendant.

In testimony whereof I have hereunto set my hand and
[SEAL.] seal, at my office, in Fairfield, this 28th day of May, A. D. 1884.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed June 2nd, 1884. J. A. Jones, clerk.

220 *Plea & Answer of Malinda Sanders.*

In Circuit Court United States, Southern Dist. Ills. June Term, 1884.

FERNANDO B. HANE
v.
JOHN J. BURHAM *et al.*

Intervening in suit of—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.*
} Bill to Reforeclose a Mortgage.

The separate plea and answer of def't, Malinda Sanders, to complainant's bill of complaint.

This def't, to all the relief sought by the bill, and also to the discovery thereby sought, except the discovery sought by or in respect of so much of the said bill as prays that this def't may — and set forth whether the county of Wayne executed a deed and mortgage to the use of the Mt. V. R. R. Co., dated April 20th, 1859, to secure the payment of $800,000 of the bonds of the Mt. V. R. R. Co., and that this def't purchased of the county of Wayne only the equity of redemption to redeem from the said mortgage—

221 This defendant does plead in bar, and for plea says—

That on the — day of ——, 1880, this def't filed in the circuit court of Wayne county, Ills., his bill of complaint against Walter B. Scates to set aside his deed made and executed to him by N. M. Broadwell as a cloud on this def't's land, to wit, the S. W. S. E. section 11, town. 2 south, 5 east, 3 P. M., being the lands described in the complainant's bill mentioned.

That the said Walter B. Scates appeared in the said cause filing first a demurrer, and, after argument on the *the* said demurrer, the same being overruled, he filed a plea setting up title by virtue of a decree obtained in a case entitled John W. Kennicott *et al. vs.* The County of Wayne, at the June term, 1874, of this court, with a sale of the land on the 18th day of Sept., 1877, and by deed under the said sale, dated the 4 day of May, 1879, which plea was alike overruled, after which he filed an answer; whereupon this def't filed a replication, and after full proof was taken and argument of counsel the court entered a decree declaring his title was a

222 cloud on the title of this def't's land, as above described, and that the same were null and void, and which is more fully shown by said decree, which this def't here pleads in bar, a true copy of which is here attached, marked Ex. A, and made a part of this plea.

All of which matters and things this def't avers to be true, and pleads the same to the whole of the said bill, except such part of discovery thereby sought as aforesaid, and this def't prays the judgment of this honorable [court] whether he ought to be compelled to

make any further or other answer to so much of the said bill as is hereby pleaded to, and prays to be hence dismissed with his cost.

And, for answer to such parts of the said bill as are excepted by this def't, admits that he purchased the said land from the county of Wayne.

But denies that he purchased only the equity of redemption, and avers that he purchased the legal title in fee under a power whereof the county of Wayne had the right and power to convey the fee, as is here shown by the following:

223 1st. The Congress of the United States duly passed an act—act approved Sept. 28th, 1850—entitled An act to enable the State of Arkansas and other States to reclaim the swamp land within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

2nd. The Legislature of the State of Illinois passed an act, approved by the Governor of said State on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and pay the expense of surveying and selecting the same, vesting the title to said lands in Wayne county.

And to so much of complainant's bill as sets up and alleges that the county of Wayne executed a trust deed and mortgage, dated April 20th, 1859, on the land now sought to be reforeclosed this defendant denies.

224 He admits that S. J. R. Wilson and T. M. Scott, two of the county judges, did sign a pretended deed and mortgage, which was put of record as charged.

But def't denies that it was the act of the county of Wayne or by any power vested in the county of Wayne, but avers that it was done without any power existing for the county of Wayne to be bound.

That it was thereby alone the act of S. J. R. Wilson and T. M. Scott, it being done out of any term of court, either general or special, without any notice to the other county judge, although he was residing in the county.

And def't avers that there was no power either for the county of Wayne to aid the Mt. V. R. R. Co. nor for the R. R. Co. to secure the aid of the county by the so-called mortgage of the swamp land, as will appear by the said trust deed and mortgage on their face.

Defendant admits that certain parties, to the number of over forty, claim title or right under and by virtue of being successor- and assignees of the Mt. V. R. R. Co., and, claiming to hold the bonds

225 of the Mt. V. R. R. Co., went through a proceeding in this court and obtained a decree to sell the said land without this def't being a party thereto, as set out in complainant's bill, and that deeds were made to parties pretending to purchase, and that this def't and many more did institute suit to set aside the same, as alleged in complainant's bill, which was commenced on the — day of ——, 1880, in the circuit court of Wayne county, it being for the Oct. term of that court.

That a large number of suits were so commenced, being of like character.

That the same and each was defended by said Walter B. Scates the party defendant therein—

1st by demurrer, then by plea, then by answer, and full evidence taken.

That the said court, at the Oct. term, 1881, in the case of Preston R. King *vs.* Walter B. Scates, one of the same class, decreed that said Scates' title so obtained with his deeds of record were null and void and were a cloud on the title of this defendant.

Whereupon the said Walter B. Scates took an appeal to
226 the supreme court of the State of Ills., and by agreement all other cases, among which was the case of the def't *vs.* said Scates, were held in abeyance until the same were passed upon.

That said supreme court affirmed the decision of the lower court, which decision is now reported and published in Freeman's advance sheets of Ills. Reports, which is made a part of this answer.

That this def't had so instituted a suit, which was held in abeyance until the supreme court of the State of Illinois should so pass upon the case of P. R. King *vs.* Walter B. Scates.

That at the March term, 1884, of the said Wayne county court the defendant's case *vs.* Walter B. Scates, involving the S. W. S. E. sec. 11, town 2 S., 5 range east, 3 P. M., was taken up — decree rendered in said cause decreeing that the consideration for the execution of the said mortgage and trust deed totally and wholly failed.

That the act of S. J. R. Wilson and T. M. Scott in executing the said deed and mortgage was not the act of the county of Wayne.

227 That the county of Wayne had no power to execute a mortgage to the use of the Mt. V. R. R. Co., and they were and are null and void and a cloud on the title of this def't, and decreed that they and all title thereat acquired be cancelled of record.

That same suits were pending in said court long before the said complainant, Fernando B. Hane, claimed to have acquired title to the said land by purchase of the said Walter B. Scates.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill of complaint, and prays a severance from other defendants in this cause and to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MALINDA SANDERS.

H. TOMPKINS,
Def't's Att'y.

STATE OF ILL., }
Wayne County, } *ss:*

Personally appeared before me this 30th day of May, 1884,
228 Malinda Sanders, the above-named def't, and, being duly sworn, says that the facts set forth in the above plea are true,

and the matters stated on information and belief that she believes the same true.

A. R. ROBINSON,
Justice of the Peace.

EXHIBIT "A" to Plea of Malinda Saunders.

STATE OF ILLINOIS, } ss:
Wayne County, }

Wayne County Circuit Court, to March Term, A. D. 1884.

MALINDA SANDERS
vs.
WALTER B. SCATES. } Bill to Remove Cloud from Title.

This cause having been submitted to this court for decision at its March term, 1884, it being the 5 day of April and being the 10 day of the term, on the bill, answer, replication, exhibits, and proof, both oral, documentary, and in depositions, with stipulations and agreement of counsel, and having been fully considered by the court, and the court, now being fully advised in the premises, finds that
229 the county of Wayne, in the State of Illinois, being the owner of the lands in this cause involved, described as follows, to wit, the southwest quarter of the southeast quarter section eleven, town. two south, range five east, all in said Wayne county, Illinois, and on the 1st day of November, 1864, the said county of Wayne sold and conveyed said S. W. S. E. sec. 11, T. 2 S., R. 5 east, to one Richard Sanders, and the deed to him was filed for record and recorded in Book 2, page 482, of Wayne county records; and on the 27th day of Aug., 1873, by will he sold and conveyed the same to Malinda Sanders, his wife, the complainant, and that said grantee paid to said Wayne county at the time of his purchase a good and valuable consideration for each of said tracts, being the full and reasonable value thereof at the time of such purchase and conveyance, and that said purchaser and complainant, immediately after receiving the deed therefor from said county, entered into the actual possession of said tract and retained such open and notorious and adverse possession of said tract, paying tax each and every year to the commencement of this suit.

230 The court further finds that S. J. R. Wilson and T. M. Scott, judges of the county court of Wayne county, on the 20th day of April, 1859, executed a certain deed of trust, and also a mortgage of the same date, by two only of the three judges at what purported to be a special meeting of the county court without notice to the third, whereby it conveyed to Isaac Seymour, as a trustee, as a trust the said tracts of land hereinbefore described, together with many other tracts, to secure certain bonds of the Mount Vernon Railroad Company upon certain conditions and for certain purposes, hereinafter more fully set out.

That said county of Wayne was in nowise indebted to said rail-

way company nor to any holder of its bonds nor to any one by reason of said bonds, nor was it liable in any way for their payment; but that the purport of the said trust deed and mortgage was to secure the building of said company's railway within and through said county, upon the consideration that they, the Mount Vernon Railroad Company, had acquired by assignment a certain
231 contract made by the county of Wayne and a certain firm named Vanduser, Smith & Co., whereby it was agreed that upon the performance of the certain undertaking on the part of Vanduser, Smith & Co. by the said railway company the said lands should be liable under said trust deed and mortgage to the payment of said bonds and might become liens upon the said lands, and that the consideration and only consideration for the pretended execution of said trust deed by said county was the construction and completion of said railroad through said county as aforesaid under the said contract made with Vanduser, Smith & Co.; and the court further finds that no railroad or part of railroad was ever constructed, but was abandoned in August, 1860.

That one N. W. Broadwell, through whom defendant holds, and the defendant had actual knowledge of the want of consideration money for the county of Wayne to execute said mortgage, and had also actual knowledge of the complete and utter failure of such consideration before they purchased said lands.

232 The court also further finds that on the 7th day of March, 1865, John W. Kennicott, together with certain other persons, all claiming to be holders and owners of the bonds of the said Mount Vernon Railway Company, filed their certain bill in chancery in the circuit court of the United States for the southern district of Illinois, impleading as defendants the said Mount Vernon Railroad Company and the said county of Wayne as defendants and as the only defendant thereto, and by various amendments thereafter had finally prayed the aid of said United States court to the end that the said trust deed and mortgage be declared a lien upon said lands in said trust deed described, including said land hereinbefore described as having been purchased from said county by complainant and his grantor.

That such proceedings were had in said United States court in said cause that a decree was finally rendered therein at the June term, 1874, of said court declaring certain of said bonds of said railway company produced in evidence to be liens on said
233 lands by reason of said trust deed and mortgage and ordering the sale of the lands, including the lands of this complainant, by master in chancery of said United States circuit court, and the proceeds of such sale to be paid to the holders of said bonds of said railway company.

That under said decree John A. Jones, master in chancery of said United States court, on the 18th day of September, 1877, did so offer said lands for sale under said decree and reported that he had sold the same to R. P. Glenn, N. M. Broadwell, Stephen A. Goodwin, Samuel J. Crooks, and Isaac Taylor, not as individuals, but as trustees for the complainants in said decree.

That afterwards John A. Jones, master as aforesaid, after the term of fifteen months allowed by said decree for redemption of said lands from said decree to expire, executed and delivered to one N. M. Broadwell, who claimed to hold the certificate of such purchase by assignment, a deed purporting to convey said lands in said trust deed mentioned, among them being the said tract belonging to this complainant as aforesaid, and that said Broadwell conveyed
234 the same May 31st, 1879, being the lands of said complainant aforesaid, to Walter B. Scates, the defendant herein, and that said deed from said master in chancery to said Broadwell was on the 27th day of May, 1879, filed for record in the office of circuit clerk and *ex officio* recorder of deeds in and for Wayne county, and appears now of record on pages 297 to 316, inclusive, in Book 38 of said deed record, and among which lands so described is included the complainant's; that said deeds from said N. M. Broadwell to Walter B. Scates was also filed in the same office for record, and appears now of record in said recorder's office on page 350, in Book B of said records.

And the court further finds that said complainant, Malinda Sanders, long before and at the time of the institution of said suit in chancery in the said United States court, was in the open, actual, and visible possession of said tracts of land in this cause involved, and was not a party privy defendant or otherwise to said suit in said United States court.

235 And the court further finds that said Mount Vernon Railroad Company did not nor did its assignees nor any one for it file a plat of the survey of the line of its road with the county court of said Wayne county, nor did its assignees or any one for it construct or build or caused to be constructed and built a railroad into or through said Wayne county.

Wherefore it is adjudged and decreed by the court that the consideration for the execution of said trust deed and mortgage to Isaac Seymour by said Wayne county wholly and entirely failed, and that the said trust deed and mortgage so executed by S. J. R. Wilson and T. M. Scott is not the act of the county of Wayne, and that Wayne county had no power to execute the same, and that they were and are null and void.

That Malinda Sanders, not being a party to said decree in said United States court, whereon defendant in this case bases his titles to the tracts in this cause in controversy, and having pur-
236 chased such tracts before the institution of the suit resulting in said decree, and being at the time of the institution of the suit and long before that in open, actual, and visible possession of said tracts of land, is in nowise bound nor affected by said decree, nor was any lien by said decree legally or equitably fixed or established on his land in this cause involved, and that the said deed from said master in chancery to said Broadwell and from said Broadwell to said defendant, Walter B. Scates, so far as they purport to convey the title to said tracts, to wit, the S. W. S. E. sec. 11, T. 2 S., R. 5 east, are inoperative and void and of no effect, and the same and each of them are declared to be clouds upon the title of

complainant's land and are hereby cancelled of record and to be forever hereafter for naught esteemed.

It is further ordered that the defendant pay the costs of this proceeding, to be fixed by the clerk of this court, and that execution and fee bill issue therefore as *proved* by law.

Approved.

C. S. CONGER, *Judge.*

237 STATE OF ILLINOIS, } ss:
Wayne County, }

I, R. E. Mabry, clerk of the circuit court in and for said county and State, do hereby certify that the foregoing is a true, perfect, and complete copy of a decree rendered at the March term, A. D. 1884, of the Wayne county circuit court, wherein Malinda Saunders was plaintiff and Walter B. Scates was defendant.

In witness whereof I have hereunto set my hand and af-
[SEAL.] fixed the seal of said court, at my office, in Fairfield, this May 27th, A. D. 1884.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed June 2nd, 1884. J. A. Jones, clerk.

Plea & Answer of M. M. Wheeler.

In Circuit Court United States, Southern District Illinois. June Term, 1884.

238 FERNANDO B. HANE }
v.
J. J. BURHAM *et al.* }

Intervening in suit of—

ELIZABETH H. TAYLOR }
v. } Bill to Reforeclose a Mortgage.
J. B. BOZARTH. }

The separate plea and answer of def't, M. M. Wheeler, to complainant's bill of complaint.

This def't, to all the relief sought by the bill, and also to the discovery thereby sought, except the discovery sought by or in respect of so much of the said bill as prays that this defendant may answer and set forth whether the county of Wayne executed a deed and mortgage to the use of the Mt. Vernon R. R. Co., dated April 20th, 1859, to secure the payment of $800,000 of the bonds of the Mt. V. R. R. Co., and that this def't purchased of the county of Wayne only the equity of redemption to redeem from the said mortgage—this def't does plead in bar, and for plea says—

That on the — day of ——, 1880, this def't filed in the circuit
239 court of Wayne county, Ills., his bill of complaint against Joseph W. Ward to set aside his deed made and executed to

him by N. M. Broadwell as a cloud on this def't's land, to wit, the N. ½ of N. E. sec. 27, town. 2 S., 6 east, 3 P. M., being the lands described in the complainant's bill mentioned.

That the said Walter B. Scates appeared in the said cause for the said def't, filing first a demur, and, after argument on the said demur, the same being overruled, he filed a plea setting up his title by virtue of a decree obtained in a case entitled John W. Kennicott *et al. vs.* The County of Wayne, at the June term, 1874, of this court, with a sale of the land on the 18th day of Sept., 1877, and by deed under the said sale, dated the 4th day of May, 1879, which plea was alike overruled, after which he filed an answer.

Whereupon this def't filed a replication, and after full proof was taken and argument of counsel the court entered a decree declaring his title was a cloud on the title of this def't's land, as above described, and that the same were null and void, and which is
240 more fully shown by said decree, which this def't here pleads in bar, a true copy of which is here attached, marked Ex. A, and made a part of this plea.

All of which matters and things this def't avers to be true, and pleads the same to the whole of the said bill, except such part of discovery thereby sought as aforesaid, and this def't prays the judgment of this honorable court whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and prays to be hence dismissed with his cost.

And, for answer to such parts of the said bill as are excepted by this def't, admits that he purchased the said land from the county of Wayne, but denies that he purchased only the equity of redemption, and avers that he purchased the legal title in fee under a power whereof the county of Wayne had the right and power to convey the fee, as is here shown by the following:

1st. The Congress of the United States duly passed an act—act approved Sept. 28th, 1850—entitled An act to enable the State
241 of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

2nd. The Legislature of the State of Illinois passed an act, approved by the Governor of said State on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and pay the expense of surveying and selecting the same, vesting the title to said lands in Wayne county.

And to so much of complainant's bill as sets up and alleges that the county of Wayne executed a trust deed and mortgage, dated April 20th, 1859, on the land now sought to be reforeclosed, this def't denies.

He admits that S. J. R. Wilson and T. M. Scott, two of the county judges, did sign a pretended deed and mortgage, which was put of record, as charged; but def't denies that it was the act of the county of Wayne or by any power vested in the county of Wayne,
242 but avers that it was done without any power existing for the county of Wayne to be bound.

That it was thereby alone the act of S. J. R. Wilson and T. M. Scott, it being done out of any term of court, either general or special, without any notice to the other county judge, although he was residing in the county.

And def't avers that there was no power either for the county of Wayne to aid the Mt. V. R. R. Co. nor for the R. R. Co. to secure the aid of the county by the so-called mortgage of the swamp lands, as will appear by the said trust deed and mortgage on their face.

That certain parties, to the number of over forty, claim title or right under and by virtue of being successors or assignees of the Mt. V. R. R. Co., and, claiming to hold the bonds of the Mt. V. R. R. Co., went through a proceeding in this court and obtained a decree to sell the said land without this def't being a party thereto, as set out in complainant's bill, and that deeds were made to parties pretending to purchase, and that this def't and many more did insti-

243 tute suit to set aside the same, as alleged in complainant's bill, which was commenced on the — day of ——, 1880, in the circuit court of Wayne county, it being for the Oct. term of that court.

That a large number of suits were so commenced, being of like character; that the same and each was defended by said Walter B. Scates, the party def't therein, 1st by demur, then by plea, then by answer, and full evidence taken; that the said court, at the Oct. term, 1881, in the case of Preston R. King *vs.* Scates, one of the same class, decreed that said Scates' title so obtained with his deeds of record were null and void and were a cloud on the title of this defendant.

Whereupon the said Walter B. Scates took an appeal to the supreme court of the State of Illinois, and by agreement all other cases, among which was the case of the def't *vs.* said Ward, were held in abeyance until the same was passed upon; that the supreme court affirmed the decision of the lower court, which decision is now reported and published in Freeman's advance sheets of Ills. Reports, which is made a part of this answer.

244 That this def't had so instituted a suit, which was held in abeyance until the supreme court of the State of Ills. should so pass upon the case of P. R. King *vs.* Walter B. Scates.

That at the March term, 1884, of the said Wayne county court the defendant's case *vs.* Walter B. Scates, involving the N. ½ N. E. ¼ sec. 27, town. 2 south, range 6 east, 3 P. M., was taken up and the decree rendered in said cause, as set out in Ex. A, decreeing that the consideration for the execution of the said mortgage and trust deed totally and wholly failed.

That the act of S. J. R. Wilson and T. M. Scott in executing the said deed and mortgage was not the act of the county of Wayne; that the county of Wayne had no power to execute a mortgage to the use of the Mt. V. R. R. Co., and they were and are null and void and a cloud on the title of this def't, and decreed that they and all title there*at* acquired be cancelled of record.

That same suits were pending in said court long before the said complainant, F. B. Hane, claimed to have acquired title to the said land by purchase of the said Joseph W. Ward.

245 And this def't, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill of complaint —, and prays a severance from other defendants in this cause, and to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

M. M. WHEELER.

H. TOMPKINS,
Def't's Sol.

STATE OF ILLS., }
Wayne County, } *ss:*

Personally appeared before me this — day of May, 1884, the above-named def't, M. M. Wheeler, and, being duly sworn, says that the facts stated in the foregoing plea are true, and that the matters stated on information and belief he believes the same to be true.

R. E. MABRY,
Cir. Clerk.

EXHIBIT "A" to Plea of M. M. Wheeler.

STATE OF ILLINOIS, }
Wayne County, } *ss:*

Wayne County Circuit Court, to March Term, A. D. 1884.

246 M. M. WHEELER }
v. } Bill to Remove Cloud from Title.
JOSEPH W. WARD. }

This cause having been submitted to this court for decision at its March term, 1884, it being the 5 day of April, 1884, and being the 10th day of the term, on the bill, answer, replication, exhibits, and proof, both oral, documentary, and in depositions, with stipulations and *agreed* by counsel, and having been fully considered by the court, and the court, now being fully advised in the premises, finds—

That the county of Wayne, in the State of Illinois, being the owner of the lands in this cause involved, described as follows, to wit, the north half of the northeast quarter section twenty-seven, all in T. 2 S., R. 6 east, in said Wayne county, Illinois—

And on the 30th day of December, 1863, the said county of Wayne sold and conveyed said N. ½ N. E. sec. 27, T. 2 S., R. 6 east, to M. M. Wheeler, the complainant, and the deed to him was filed for record April 13th, 1866, and recorded in Book —, page 229, of Wayne County Records; and that said grantee paid to said
247 Wayne county at the time of his purchase a good and valuable consideration for each of said tracts, being the full and reasonable value thereof at the time of such purchase and conveyance, and that said purchaser and complainant, immediately after receiving the deed therefor from said county, entered into the actual

possession of said tract and retained such open and notorious and adverse possession of said tract; that he has paid all taxes assessed each and every year since 1863 to the commencement of this suit.

The court further finds that S. J. R. Wilson and T. M. Scott, judges of the county court of Wayne county, on the 20th day of April, 1859, executed a certain deed of trust, and also a mortgage of the same date, by two only of the three judges, at what purported to be a special meeting of the county court, without notice to the third, whereby it conveyed to Isaac Seymour, as a trustee, as a trust the said tracts of land hereinbefore described, together with many other tracts, to secure certain bonds of the Mount Vernon Railroad
248 Company upon certain conditions and for certain purposes, hereinafter more fully set out.

That said county of Wayne was in nowise indebted to said railway company nor to any holder of its bonds nor to any one by reason of said bonds, nor was it liable in any way for their payment, but that the purport of the said trust deed and mortgage was to secure the building of said company's railway within and through said county, upon the consideration that they, the Mount Vernon Railroad Company, had acquired by assignment a certain contract made by the county of Wayne and a certain firm named Vanduser, Smith & Co., whereby it was agreed that upon the performance of the certain undertaking on the part of Vanduser, Smith & Co. by the said railway company the said lands should be liable under said trust deed and mortgage to the payment of said lands and might become liens upon the said lands, and that the consideration and only consideration for the pretended execution of said trust deed by
249 said county was the construction and completion of said railroad through said county as aforesaid under the said contract made with Vanduser, Smith & Co; and the court further finds that no railroad or part of railroad was ever constructed, but was abandoned in August, 1860.

That one N. W. Broadwell, through whom defendant holds, and the defendant had actual knowledge of the want of consideration money for the county of Wayne to execute said mortgage, and had also actual knowledge of the complete and utter failure of such consideration before they purchased said lands.

The court also further finds that on the 7th day of March, 1865, John W. Kennicott, together with certain other persons, all claiming to be holders and owners of the bonds of the said Mount Vernon Railway Company, filed their certain bill in chancery in the circuit court of the United States for the southern district of Illinois, impleading as defendants the said Mount Vernon Railroad Company and the said county of Wayne as defendants and as the only defendant thereto, and by various amendments thereafter had
250 finally prayed the aid of said United States court to the end that the said trust deed and mortgage be declared a lien upon said lands in said trust deed described, including said lands hereinbefore described as having been purchased from said county by complainant.

That such proceedings were had in said United States court in

said cause that a decree was finally rendered therein at the June term, 1874, of said court declaring certain of said bonds of said railway company produced in evidence to be liens on said lands by reason of said trust deed and mortgage and ordering the sale of the lands, including the lands of this complainant, by master in chancery of said United States circuit court, and the proceeds of such sale to be paid to the holders of said bonds of said railway company.

That under said decree John A. Jones, master in chancery of said United States court, on the 18th day of September, 1877, did so offer said lands for sale under said decree and reported that he
251 had sold the same to R. P. Glenn, N. M. Broadwell, Stephen A. Goodwin, Samuel J. Cooks, and Isaac Taylor, not as individuals, but as trustees for the complainants in said decree.

That afterwards John A. Jones, master as aforesaid, after the term of fifteen months allowed by said decree *to expire* for redemption of said lands from said decree to expire, executed and delivered to one N. M. Broadwell, who claimed to hold the certificate of such purchase by assignment, a deed purporting to convey said lands in said trust deed mentioned, among them being the said tract belonging to this defendant as aforesaid, and that said Broadwell conveyed the same May 31st, 1879, being the lands of said complainant aforesaid, to Joseph W. Ward, the defendant herein, and that said deed from said master in chancery to said Broadwell was on the 27th day of May, 1879, filed for record in the office of circuit clerk and *ex officio* recorder of deeds in and for Wayne county, and appears now of record on pages 297 to 316, inclusive, in Book 38 of said deed record, and that said deeds from said N. M. Broadwell to Joseph W. Ward
252 was also filed in the same office for record, and appears now of record in said recorder's office, on page 409, and the other at page —, both in Book 38 of said records.

And the court further finds that said complainant, M. M. Wheeler, long before and at the time of the institution of said suit in chancery in the said United States court, was in the open, actual, and visible possession of said tracts of land in this cause involved and was not a party nor privy defendant or otherwise to said suit in said United States court.

And the court further finds that said Mount Vernon Railway Company did not nor did its assignees nor any one for it file a plat of the survey of the line of its road with the county court of said Wayne county, nor did its assignees or any one for it construct or build or cause to be constructed or built a railroad into or through said Wayne county.

Wherefore it is adjudged and decreed by the court that the
253 consideration for the execution of said trust deed and mortgage to Isaac Seymour by said Wayne county wholly and entirely failed, and that the said trust deed and mortgage so executed by S. J. R. Wilson and T. M. Scott is not the act of the county of Wayne, and that Wayne county had no power to execute the same, and that the same is null and void.

That M. M. Wheeler, not being a party to said decree in said United States court, whereon defendant in this case bases his titles to the tracts

in this cause in controversy, and having purchased such tracts before the institution of the suit resulting in said decree, and being at the time of the institution of the suit and long before that in open, actual, and visible possession of said tracts of land, is in nowise bound nor affected by said decree, nor was any lien by said decree legally or equitably fixed or established on his land in this cause involved, and that the said deed from said master in chancery to said Broadwell and from said Broadwell to said defendant, Joseph W. Ward, so far as they purport to convey the title to said tracts, to wit,
254 the N. ½ of the northeast ¼ section 27, town. 2 south, range 6 east, are inoperative and void and of no effect, and the same and each of them are declared to be clouds upon the title of complainant's land, and are hereby cancelled of record and to be forever hereafter for naught esteemed.

It is further ordered that the defendant pay the costs of this proceeding, to be fixed by the clerk of this court, and that execution and fee bill issue therefor as *proved* by law.

Approved.

C. S. CONGER, *Judge.*

STATE OF ILLINOIS, } ss:
Wayne County, }

I, R. E. Mabry, clerk of the circuit court in — for the county of Wayne and State of Illinois, do hereby certify that the foregoing is a true, perfect, and complete copy of a decree rendered at the March term, A. D. 1884, of the Wayne county circuit court, wherein M. M. Wheeler was plaintiff and Joseph W. Ward was defendant.

In testimony whereof I have hereunto set my
[SEAL.] 255 hand and affixed the seal of said court, at my office, in Fairfield, this the 28th day of May, A. D. 1884.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed June 2nd, 1884. J. A. Jones, clerk.

And also on the same day and year last aforesaid, to wit, June 2nd, 1884, came the defendant, J. B. Borah, by his solicitor, and filed in the said clerk's office his disclaimer in said cause; which said disclaimer is in the words and figures following, to wit:

Desclaimer of J. B. Borah.

Circuit Court United States, Southern Dist. Ills. June Term, 1884.

FERNANDO B. HANE
vs.
——— ———.

Intervening in cause of—

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH. } Bill to Reforeclose a Mortgage.

256 The disclaimer of J. B. Borah, one of the defendants, to the above bill of complaint.

This defendant, saving and reserving to himself now and at all times hereafter all manner of advantage and benefit of exceptions and otherwise that can or may be had and taken to the many untruths, uncertainties, and imperfections in the said complainant's bill of complaint contained, for answer thereunto or unto so much or such part thereof as is material for this def't to make answer unto—he answers and says that he fully and absolutely disclaims all manner of right, title, and interest whatsoever in and to the N. E. N. E. sec. 35, town. 1 N., R. 8 east, having conveyed the same to T. H. B. King over 15 years ago, which appears of record in the record of deeds of Wayne Co.

And this defendant denies all and all manner of unlawful combination and confederacy unjustly charged against him in and by the bill of complaint, without this, that any other matter or thing in said bill contained material or necessary for this defendant to make answer unto and not herein well and sufficiently
257 answered unto, confessed or avoided, traversed or denied, as true; all which matters and things defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. B. BORAH.

H. TOMPKINS, *Resp't's Sol'r.*

STATE OF ILLS., } *ss:*
Wayne Co., }

I, H. Tompkins, the att'y for J. B. Borah, being duly sworn, say that I have examined the record of deeds of the recorder's office of Wayne county, and that the above disclaimer is true.

H. TOMPKINS.

(Endorsed:) Filed June 2nd, 1884. J. A. Jones, clerk.

And afterwards, to wit, on the 3rd day of June, in the year
258 last aforesaid (A. D. 1884), came the defendant, Van. R. Price, by his solicitors, and filed in said clerk's office his demurrer in said cause; which said demurrer is in the words and figures following, to wit:

Demurrer of Van R. Price.

United States Circuit Court. June Term, 1884.

ELIZABETH H. TAYLOR *et al.*, Complainants,
v.
J. B. BOZARTH *et al.*, Respondents.

Now comes Van R. Price, one of the defendants in the above cause, and says that the bill of complaint filed by said complainants is insufficient in law for him to be required to answer thereto, and this he prays may be inquired of by the court.

McCARTNEY & MILLER,
Att'ys for Def't Price.

(Endorsed:) Filed June 3rd, 1884. J. A. Jones, clerk.

And afterwards, to wit, on the 5th day of June, in the year
259 last aforesaid (A. D. 1884), came the defendant, G. J. George, in person, and filed in the said clerk's office his answer in said cause; which said answer is in the words and figures following, to wit:

Answer of G. J. George.

UNITED STATES OF AMERICA,
Southern District of Illinois, } *ss:*

June Term, 1884.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.*
No. 6309. In Chancery.

G. J. George, one of the respondents to interve-ing petition filed in above cause, for answer to same, so far as he is affected thereby, answering, says to the court—

That he has *none*, nor did not have at the time of the filing of said petition, any kind of interest or claim to any of the lands described therein and does not desire to have, and most respectfully, in his own proper person and behalf, asks the court to dismiss him without cost.

G. J. GEORGE, *P. S.*

(Endorsed:) Filed June 5 1884. J. A. Jones, clerk.

260 And afterwards, to wit, on Tuesday, the 30th day of September, in the year last aforesaid (A. D. 1884), at the June term of said court, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Allowing Complainants to Take Testimony, &c.

JAMES C. CLOYD *v.* CLARISSA JORDAN *et al.*	T. No. 113. In Chancery.
C. T. AUSTIN *v.* MARSHALL BOOK *et al.*	In Chancery.
JOHN B. CORNELL *v.* THOMAS J. PETTYJOHN *et al.*	In Chancery.
ELIZABETH H. TAYLOR *v.* J. B. BOZARTH *et al.*	In Chancery.

And now, at this day, comes as well the defendants, by Tompkins and Hanna, their solicitors, as the said complainants, by Beecher & Scates & Whitney, their solicitors, and upon motion of
261 complainants' solicitors, and after hearing counsel, it is ordered that leave is hereby granted to complainants' solicitors or any thereof to take the deposition *in rei perpetuam memoriam* of Angus M. Grant, at Mount Vernon, in the State of Illinois, before John S. Bogan, clerk of the circuit court, Jefferson county, in said State, upon the 27th day of October, 1884, or upon such other day as the parties can mutually agree upon; and it is further ordered that John A. Jones, Esq., the clerk of this court, shall forward safely to said clerk at Jefferson county the following papers and documents, being files of the case of John W. Kennicott *et al. vs.* Board of Supervisors of Wayne County *et als*, being the suit to foreclose the swamp lands of Wayne county, for use in taking said deposition, viz: Schedule A referred to in order, contract of Wayne county with Van Duzer, Smith & Company to build railroad in Wayne county, dated 19th November, 1858; supplemental contract thereto, dated December 27th, 1858; assignment of said contract to the Mount Vernon R. R. Company, dated September 12, 1859; contract to deposit bonds with Hersey, dated April 27, 1859; order of Z. Casey, president Mt. Vernon
262 R. R., to N. A. Smith, treasurer, to deliver to Ira Hersey the bonds, June 15, 1859; receipt of Ira Hersey for said bonds under said order, dated June 20th, 1859; receipt from S. J. R. Wilson to Charles W. Lewis, treasurer of Mt. Vernon R. R. Co., for $400,000 bonds, dated June 18, 1860; receipt of Charles W. Lewis to S. J. R. Wilson for the same bonds, dated June, 1860; let-

ter from S. J. R. Wilson to Charles W. Lewis requesting him to furnish Mr. Davis and Mr. Hersey with the bonds for purpose therein expressed, dated in 1860; letter from Charles W. Lewis to J. N. Whiting, with list of Mt. Vernon R. R. Co. bonds, of date May 1861, also list; promissory note, with condition, dated September 22, 1860, signed by company, by Charles Lewis, treasurer; certificate of Charles W. Lewis, treasurer Mt. Vernon R. R. Co., dated May 1, 1861, certifying to the genuineness of eight 500 bonds of Mt. Vernon R. R. Co., with S. J. R. Wilson's authority to locate the same bonds; report of L. J. Germain, chief engineer Mt. Vernon R. R. Co., of his survey and location of a line of the railway from the eastern boundary of Wayne county to Mt. Vernon, in Jefferson county; letters—
263 five letters from S. B. Hendricks to S. J. R. Wilson; two letters from J. T. Vanduzer to S. J. R. Wilson; three letters from Ira Hersey to S. J. R. Wilson; and that said clerk of this court shall instruct said clerk of the circuit court at Jefferson county to return said papers to this court by a safe mode when he is through with the same, costs to abide suit, but expenses to be in the first instance advanced by the complainants.

And afterwards, to wit, on Wednesday, the 1st day of October, in the year last aforesaid, and at the June term of said court, the following further proceedings were had in said cause in said court and entered of record, to wit:

264 *Order Overruling Demurrer of Def'ts to Bills.*

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 113. In Chancery.

C. T. AUSTIN
v.
MARSHALL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.* } In Chancery.

Now, on this 1st day of October, 1884, come the parties to the consolidated causes and submit the demurre of the defendants to the complainants' bill, and the court, having heard and considered the same as well as the arguments of counsel thereon, and being sufficiently advised in the premises, doth order and decree that the demurrer be overruled, and that the defendants have leave to answer by the third Monday of November next.

265 And afterwards, to wit, on the 18th day of November, in the year last aforesaid (1884), came H. Tompkins and R. P. Hanna, solicitors for the defendants in said cause, and filed in said clerk's office the joint answer of such defendants who had been served with process and had not answered separately to the bill of complaint herein; which said joint answer is in the words and figures following, to wit:

Joint Answer of Defendants.

UNITED STATES OF AMERICA:

Circuit Court United States for the Southern Dist. Ills.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.*
} Bill for Relief and for Reforeclosure.

J. B. Bozarth, R. H. Puckett, John Waggoner, John Haflele, John R. Bain, Lavina Sumpter, Wm. Robertson, R. D. Adams, Geo. F. Pykett, Thos. Beyhamer, Van. R. Price, A. Wall, R. H. Campbell, S. A. Skinner, Wilkenson Brock, John Johnson, Geo. W. Draper, Abraham Austermann *et al.*, Anoka Martin, James Martin, Sarah Bane, J. Renfro, E. T. Hall, Thos. J. Bain, J. C. Williams, Burchard Wilson, Geo. Warren, Elizabeth Smoke, H. Tompkins, Wel-
266 come Compton, Andrew Blakeley (Joseph White, heirs of Rich. White), Wm. N. Borah, Asa F. Atteberry, Susan Pharr, Sm. Sparks, P. R. King, A. T. Atteberry, T. J. Pettyjohn, James McCleary, S. Mundy, Sm. Garrison, Elizabeth Slover, Wm. Sandlin, Michael Book, Caleb Petticord, Sarah St. Leger, A. J. Pettigrew.

The above-named defendants *all* all others who have been served by summons in the above-entitled cause and cases consolidated as def'ts thereto, except such as have filed separate defences, by H. Tompkins and R. P. Hanna, their att'ys, for answer *the* the complainants' bill as consolidated, now and at all times reserving to themselves all right of exceptions to said bill of complaint, for answer thereto admit that the county was the owner of the swamp lands, the same as set out in complainants' bill, in 1859.

They admit that the Mt. V. R. R. Co. was incorporated by the act of the Legislature of the State of Illinois in 1855.

They admit that the people of the county of Wayne had a vote in November, 1855, declaring as follows: For appropriating the swamp lands of Wayne county as a bonus to any company
267 for building a railroad through the county.

They deny that the county of Wayne executed to Isaac Seymour a deed of trust and mortgage on said lands or any lands, but aver the fact to be that S. J. R. Wilson, T. M. Scott, two of the three judges of the county court, did out of any term of the county court, and without calling any special term, and without notice to the other judge, who lived and was then within the county, executed what they termed a trust deed and mortgage, as set out in complainants' bill.

That at the time the said instruments purporting to have been executed a contract was in full force, purporting to have been made by the county of Wayne with a firm styled Vanduser, Smith & Co., which contract bears date Nov. 19th, 1858, and was duly entered and recorded in the proceedings of the county court as of that date, and was in substance as follows:

The said firm contracted to construct a railroad through the county of Wayne by the 19th day of November, 1860, for
268 which the county of Wayne agreed to pay said firm $12,500 for each three miles of grading on said road when complete, and $6,000 per mile for each mile of iron rails on said road, to be paid for in swamp lands of Wayne county at $5.00 per acre; all of said lands were to be conveyed by Wayne county to the said Vanduser, Smith & Co. or their assigns when the railroad should be completed; and in case the said Vanduser, Smith & Co. or their assigns should fail to comply with the terms of said contract and commence and complete the same within the time agreed, then all work done on said railroad was to be forfeited and the said contract was to be thenceforth null and void.

That on the 20th day of April, 1859, a pretense was set up by the Mt. V. R. R. Co. that they had acquired by assignment the said contract with Vanduser, Smith & Co., and on such pretense, and that they would complete a railroad through the county of Wayne under and by the terms and conditions therein written, did procure the aforesaid pretended trust deed and mortgage to be executed,
269 out of any term of court and away from the court-house, by the said two judges, as heretofore set out, they, the Mt. V. R. R. Co., agreeing and assuming to perform said contract, conditional as therein set out and within the time, as the consideration therefor.

That the performing and fulfilling the conditions of the contract was the only consideration for the execution of the said instrument, and within the time mentioned.

The respondents, for further answer, say that the pretense that the Mt. V. R. R. Co. had then, on the 20th of April, 1859, acquired by assignment the said contract with Vanduser, Smith & Co. was not true; that they only acquired it on Sept. 12th, 1859, by the said Vanduser, Smith & Co. becoming stockholders thereto and in full control, without payment of anything or for any value, except to construct the R. R. as a condition therefor.

That at the date of the pretended assignment of the said contract and the execution of the said pretended deed and mortgage the Mt. V. R. R. Co., in consideration of the fulfillment of the Vanduser, Smith & Co. contract, executed a mortgage on all their
270 property, covenanting to pay all tax.

It recited that it mortgaged the railroad of the Mt. V. R. R. Co. constructed in Ashley, in Washington county, to the eastern line of Wayne county, in the State of Illinois, together with all its, said company's, real estate, land and tenements and hereditaments, acquired or to be acquired, and also — and every privilege, franchise, and right of said Mt. V. R. R. Co. acquired at the date of the mortgage or that it at any time thereafter may have acquired,

and also all property, privileges, and franchise of Mt. V. R. R. Co. whatsoever, and whatsoever was owned by it or to be acquired, and which rights were conveyed to Isaac Seymour, trustee, on the 20th day of April, 1859, conditioned to secure the payment of the $800,000 of bonds heretofore set out, at the time and manner therein specified, alleging in said mortgage that the $800,000 of the bonds were alike secured by the pretended deed and mortgage heretofore set out: And provided further, That if in case of default of payment of any interest as the same became due and remaining in de-
271 fault for six months and unpaid the whole debt, both principal and interest, was due and payable, and that the trustee was to enter upon the said premises and take possession of all property of the Mt. V. R. R. Co. and sell the same to the highest bidder, and pay and discharge the said indebtedness, as by the terms thereof.

And your respondents, for further answer, aver that the said pretended trust deed and mortgage pretended to be executed by the county of Wayne, and that executed by the Mt. V. R. R. Co., with the contract of Vanduser, Smith & Co., are but as one transaction, and were made and executed to be *in pari materia* with the conditions therein written in the said contract made with Vanduser, Smith & Co., and for no other consideration paid or agreed to be paid.

And your respondent further represents that — Vanduser, Smith & Co. nor the Mt. V. R. R. Co. nor their assigns constructed or built any railroad, nor was any constructed or built as proposed, nor was any grading done, as was required by the contract and
272 agreement with Wayne county, nor was any commenced, nor was any survey made locating the road, nor was there any plat filed, as required, with the county court and agreed to have been done.

But your respondents aver that the same was abandoned without a commencement.

That the Mt. V. R. R. Co. abandoned its organization and any attempt to construct a railroad in August, 1860.

Your respondents further represents and denies that the R. R. Co. negotiated any bonds, or that there were any put upon the market or sold to any one, or that any iron or other material was purchased with them, but charges that if any bonds did pass from the railroad company that they were obtained by fraud, and he charges that the bonds claimed in the said foreclosure suit were in the hands of the directors and the officials of the railroad company and their agents in Aug., 1860, and by them were put in suit; that the railroad company and their assigns and privies abandoned, in August,
273 1860, the construction of the said railroad and discontinued their organization, and allowed said contract made with Vanduser, Smith & Co. and all rights thereunder had to be forfeited by the county of Wayne which was done, and all proceedings under it declared null and void by order of the county court, and entered of record at the March term, 1860, and Dec. term, 1862, which orders are here shown, marked Ex. G and I, being true copies from the

record, after which date the county sold the said lands to respondents and others openly, publicly, and notoriously, free from any lien, mortgage, or deed, until all were sold, Oct. 13, 1868.

Your respondents, answering further, allege as a matter of law that the county of Wayne had no power to execute the contract with Vanduser, Smith & Co., nor to execute a mortgage to secure the payment of the bonds issued by the Mt. V. R. R. Co.; that the Mt. Vernon R. R. Co. had no authority, by virtue of its charter or otherwise, to construct any railroads in Wayne county, nor any railroad except that set out in its charter, at designated points, to wit,
274 from the Illinois C. R. R., in Marion and Washington county, to Mt. Vernon, as shown by its charter power.

That such charter power did not reach to Wayne county by eighteen miles.

Your respondents further, for answer, admit that a suit was instituted in the United States court, entitled a suit to foreclose; they deny that it was for that purpose, as set out in complainants' bill, but allege the facts to be that John W. Kennicott and others, then the directors and agents of the Mt. V. R. R. Co., instituted said suit against the Mt. V. R. R. Co., impleading the county of Wayne, to have a trustee appointed in place of Isaac Seymour, deceased, to have an accounting with the Mt. V. R. R. Co., and to enforce the trust, and for no other purpose, and that by amendment Oct. 1st, 1866, to foreclose the mortgage executed by the Mt. V. R. R. Co., making the Mt. V. R. R. Co. defendant, impleading the county of Wayne, filing in said cause the mortgage executed by the Mt. V. R. R. Co. and what purported to be a copy of the trust deed of the county of Wayne and paying a foreclosure of the mortgage of
275 the Mt. V. R. R. Co. and asking what may have been done under the said indentures attempted to be executed by the county of Wayne, setting up as a base of and only power for the county of Wayne to so execute said pretended deed and mortgage a certain deed of trust to Charles Woods, dated *dated* March 13th, 1856, for the use of the B. & F. R. R. Co. or any railroad company who would build a railroad through the county, which deed so set up, your respondents aver, was void, not having been accepted by the said R. R. Co. and had been cancelled by reconveyance of all the lands back to the county August 20th, 1857, as by its terms and conditions therein written.

That the said cause proceeded to an issue at the June term, 1868, of said court.

That the same came on to be heard on demurrer filed by the county of Wayne, which demurrer was sustained without any further action against the county in said cause, and a decree was had against the Mt. V. R. R. Co. and all of the Mt. V. R. R. Co.'s property decreed to be sold on the 25th day of May, 1868, to
276 make the demands of the complainants, to wit, $73,688.49.

That the Mt. V. R. R. Co. property under their said mortgage was sold as decreed; that the defendant in the cause, to wit, The Mt. V. R. R. Co., purchased the same, which sale was confirmed and deed given on the 23rd day of June, 1869.

And your respondents aver that a full satisfaction of the said amount then in suit was acknowledged to have been had by the complainants thereto, and that all parties claiming to hold any bonds or coupons issued by the said railroad as a matter of law acquired all that security or lien on account of the said pretended trust deed and mortgage so pretended to have been executed by the county of Wayne on your respondents' lands or described in said pretended deed and mortgage be released from any further liability for their payment in the suit then pending.

And your respondents, further answering, represent that after the dismissal of the county of Wayne on the demurrer to the complainants' bill at the June term, 1868, of said court and the decree
277 had against the Mt. V. R. R. Co., and after the Mt. V. R. R. Co. had discharged all liability on account thereof by their purchase, certain new parties, on the 17th day of January, 1870, filed an original bill or supplemental bill, which they called an amended bill, in the said former cause without any notice or first having leave of the court, to wit, Francis E. Parker, Wm. B. Bacon, Elmer A. Makepiece, administrators of Cyrus Wakefield; John H. Brown, Catherine Earl, and Alexander Riker, executors of Morris J. Earl; Wm. P. Emerson, John J. Dixwell, J. Smith, Wm. R. Ralston, Andrew H. Ward, J. Burnett, Wm. C. Plunkett, J. L. Priest, E. W. Stone, J. Sargent Smith, H. V. Davis, A. F. Gould, Wm. R. Hodges, Isaac Taylor, Ransom, Geer & Co., Wed. W. Clark, McMartin and Alexander, administrators of Peter McMartin; N. H. Streeter, Amadown, Lane & Co., N. N. Holden, Roxana Crago, Herman Powers, Glenn and Sparberry, J. T. Blakely, H. Fuller, Hosea Birdsall, Lucius F. Reed, Clark L. Potter, Joseph Waxelbaum, James O. Faircloth, Caleb Underhill, James H. Hendrickson, Oliver D. Taylor, Burgaman Wise, James F. Hendrickson, E. F. Randolph, Wm. C. Potter, as complainants, and proceeded against the county of Wayne alone,
278 leaving out the Mount Vernon Railroad Company, and decree had in the cause as well as the sale thereunder to the Mt. V. R. R. Co., and set out for the first time that they claimed authority for the Mount Vernon Railroad Company to construct a railroad through Wayne county by virtue of the assignment of the Vanduser, Smith & Co. contract, and for the first time introduced it as the power of the Mount Vernon Railroad Company to construct a railroad through said county, and of the power of the county of Wayne to mortgage its lands, as heretofore set out, and for the first time filed a copy of the pretended mortgage attempted to be executed by Wayne county, and prayed a foreclosure.

That the recovery and final decree had in said cause of Kennicott *vs.* The County of Wayne was had and obtained alone on the allegation and proof of the fulfilling of the condition of the contract with Vanduser, Smith & Co., which evidence of the fulfilling the condition or any part of the same your respondent- aver to have been false and so known to complainant in said suit.

279 And your respondents, for further answer, represent that the original pretended trust deed nor mortgage was never filed nor exhibited, nor was any reason assigned for their non-production.

That your respondents had no notice of the pending of the said suit nor of the proceedings therein had until the deeds obtained by and through the decree had therein were put upon record by the complainants, as set out in their bill of complaint, May 31st, 1879.

And your respondents, for further answer, deny that they purchased from the county of Wayne the equity of redemption only, but aver that they purchased the legal title, for a full and valuable consideration paid, under a chain of title as follows:

That the Congress of the United States duly passed an act, approved Sept. 28th, 1850, entitled An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for
280 the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

That the Legislature of the State of Illinois passed an act, approved by the Governor of said State on the 22nd day of June, A. D. 1852, entitled An act to dispose of the swamp and overflowed lands and pay the expenses of surveying and selecting the same, vesting the title to said lands in Wayne county.

3rd. The Legislature of the State of Illinois passed an act, approved by the Governor of said State Feb. 14, 1859, and by an act passed and duly approved Feb. 25th, 1867, entitled An act to incorporate the Illinois Southeastern Railway Company.

That under the said acts the county of Wayne did sell all of the swamp lands and did convey the same to the purchasers in fee, by deed, free from any deed, mortgage, decree, or lien adverse thereto, as of the date set out in complainants' bill.

But all lands were sold under the above acts of the Legislature and, as so shown, were conveyed on or before the 13th of Oct.,
281 1868, and before complainants filed their bill, to wit, Jan. 17, 1870, setting up the said contract of Vanduser, Smith & Co. as being the power and the consideration for the county of Wayne to execute the said pretended deed and mortgage, and on which lease alone they obtained their decree.

And your respondents, for further answer, represent that the county of Wayne had no interest or title to the said land or any of the swamp lands at the commencement of the complainants' said suit of foreclosure, but had disposed of the same, free from the said pretended deed and mortgage and for full value, under a valid and only existing power to convey, as before stated; that the same were at all times held under said conveyance adversely by the county of Wayne, these respondents, and other persons by open and notorious possession to any and all claim of right, title, or lien on account of the said Vanduser, Smith & Co. contract and the said pretended deed of trust and mortgage from the date of their execution.

That the county of Wayne listed the said lands when so
282 sold for taxes to the parties purchasing; that the respondents or their grantors have paid the taxes so assessed each and every year since the purchase was made from the county of Wayne.

And respondents, for further answer, admit they were not parties

nor privy to the said proceeding of foreclosure, and that as a matter of law they are not bound by the evidence or decree had in the said suit, so entitled J. W. Kennicott *vs.* The County of Wayne, and they aver that the evidence therein had and on which their decree is based is not true, and that the decree was had and based alone upon a false statement of facts, and that your respondents' rights were reserved and remain unaffected by anything in the said decree ordered or adjudged; that the court had no jurisdiction of your respondents' or of the subject-matter.

The respondents, for further answer, represent that as a matter of law and fact the complainants are not entitled to any relief in this cause.

That the matter and cause of action set up on which relief
283 is prayed existed at the time and long before the original bill was filed, in which they are guilty of laches in not having made respondents parties thereto.

That the complainants so declared that the whole debt was due and then payable when they commenced their foreclosure suit, to wit, March 7th, 1865, more than sixteen years before the commencement of their proceeding, and respondents aver that by the provisions in the said trust deed and mortgage the whole debt was due and payable if a default was made in payment of six months' interest.

That no interest was ever paid; that by the terms all was due and payable on the 20th of October, 1859; that the original complainants in the said foreclosure suit entitled J. W. Kennicott *et al. vs.* The County of Wayne *et al.*, either in their own right or their assigns, complainants hereto, had any cause of suit, claim, or demand, or lien against these respondents' lands for or concerning any the matters, transactions, or dealings in the said bill of complaint whereby they obtained their decree, claim, or demand, these re-
spondents do not in any way admit, but aver that the same
284 did arise more than sixteen years before this bill was exhibited to this honorable court, and they aver that they nor neither of them nor their grantors did not at any time within sixteen years before the filing of complainants' bill of complaint pay or ever promise or agree to pay any part of the indebtedness of the Mt. V. R. R. Co. nor of their bonds and obligations nor acknowledge any lien, but denied any such claim or lien and hold adverse thereto; and they aver that complainants herein and to the original suit well knew that respondents were in open and notorious possession and occupancy of the said lands by conveyance in fee, and hold adverse under a legal power for the county to convey, free from said pretended deed and mortgage or lien thereby, when the original suit was commenced, to wit, March 7th, 1865, and refused to proceed against respondents or to let them be made parties defendants; that any and all claim, lien, demand, or relief is barred by the statute of limitation and laches of these complainants.

And these defendants, further answering, deny that the
285 complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and prays the same

advantage of this answer as if *he* had pleaded or demurred to the said bill of complaint, and prays to be dismissed with *his* reasonable costs and charges in this behalf most wrongfully sustained.

H. TOMPKINS AND
R. P. HANNA,
Att'ys for the Above-Named Respondents Therein Named.

H. TOMPKINS,
R. P. HANNA,
Sol'rs for Respondents.

(Endorsed:) Filed November 18th, 1884. J. A. Jones, clerk.

And afterwards, to wit, on the 13th day of February, in the year of our Lord one thousand eight hundred and eighty-five, came the complainants in said consolidated cause, and also Fernando B. Hane, intervening petitioner in said cause, by their solicitor, H. C. Whitney, and filed their replications in said cause; which said replications are in the words and figures following, to wit:

286 *Replication of Fernando B. Hane.*

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

Circuit Court of the United States within and for the Southern District of Illinois.

FERNANDO B. HANE
vs.
JOHN J. BLACKMAN and Others. } In Chancery.

The replication of the said complainant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and
287 humbly prays as in and by his said bill he hath already prayed.

FERNAND. B. HANE,
By HENRY C. WHITNEY,
His Solicitor.

(Endorsed:) Filed February 13th, 1885. J. A. Jones, clerk.

Replication of Elizabeth H. Taylor et al.

UNITED STATES OF AMERICA,
Southern District of Illinois, } ss:

Circuit Court of the United States within and for the Southern District of Illinois.

ELIZABETH H. TAYLOR and Others
vs.
JOHN W. ATTEBERRY and Others. } In Chancery.

The replication of the said complainants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law
288 to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant—

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By HENRY C. WHITNEY,
Solicitor for All Complainants.

(Endorsed:) Filed February 13, 1885. J. A. Jones, clerk.

And upon the same day and year last aforesaid (February 13, 1885) came Wm. L. Ralston, by H. C. Whitney, Esq., his solicitor, and filed in said clerk's office his petition for leave to file amended bill and his amended bill in said cause; which said petition and amended bill are in the words and figures following, to wit:

289 *Petition of W. L. Ralston to File Amended Bill.*

Circuit Court of the United States within & for the Southern District of Illinois.

ELIZABETH H. TAYLOR *et al.*
v.
JOHN W. ATTEBERRY *et al.* } In Chancery.

To the Hon. Samuel H. Treat, judge of said court:

Now comes William L. Ralston and Elizabeth H. Taylor respectively, parties to the above and foregoing souit, now depending and

undetermined in said court, and move the court for leave each to file amended bills respectively in said cause, without payment of costs, under the 29th rule.

HENRY C. WHITNEY,
Solicitor for Complainants.

(Endorsed:) Filed February 13, 1885. J. A. Jones, clerk.

Amended Bill of Wm. L. Ralston.

UNITED STATES OF AMERICA,
Southern District of Illinois, } ss:

Circuit Court of the United States within and for the 7th Circuit & Southern District of Illinois.

To the honorable judges of said court, in chancery sitting:

290 Your orator, William L. Ralston, who is a citizen of the State of Ohio and one of the parties complainant to the suit now pending and undetermined in this court, now here comes, by leave, &c., and amends his bill heretofore filed; and thereupon your orator complains, in addition to the averments of his bill, and says that the said Joshua Foster, one of the defendants to his, your orator's, original bill, did heretofore file a bill in chancery in the circuit court of Wayne county, Illinois, claiming to be the holder of the following-described tract of land, situate in Wayne county, Illinois, viz., N. E. ¼ of S. W. ¼ of sec. 4, T. 1 S., R. 8 E., and to have purchased the same from Wayne county or its grantee, and to hold the same adversely to your orator, and praying that the decree heretofore rendered in and by this court in the case of John W. Kennicott *et als. vs.* Board of Supervisors of Wayne County *et als.*, on June 25, 1874, might be cancelled, annulled, and set at naught so far as said tract of land was concerned and involved, and the said circuit court of Wayne county aforesaid did, at its October term, A. D. 1884, enter a decree so annulling and making void, so far as said tract of
291 land was concerned, the said decree of this court.

And your orator, further complaining, says that one J. W. Atteberry, another of the defendants in this suit, commenced a suit in the said circuit court of Wayne county against your orator, claiming and asserting ownership in and to the following other tract of land, also situate in Wayne county, Illinois, viz., S. W. ¼ of S. W. ¼, sec. 8, T. 1 N., R. 8 E., belonging to your orator, but said J. W. Atteberry dismissed his suit at the March term, A. D. 1884, of said court; but your orator hath reason to fear and apprehend and doth fear and apprehend that said J. W. Atteberry will commence a similar suit and involve your orator's title to said land in litigation unless he be restrained and enjoined from so doing by a decree of this honorable court; and your orator avers that one H. Tompkins, an attorney of this court, is the attorney of both of said parties in said litigation.

Further complaining, your orators shows and set- forth that he

is the owner by title in fee of the following-described tract of land, also situate in Wayne county, Illinois, viz., Northeast q'r, sec.
292 21, T. 2 S., R. 9 E., and that said tract was included in a decree of foreclosure rendered in and by this court on June 25th, 1874, into the suit of John W. Kennicott *et als. vs.* Board of Supervisors of Wayne County *et al.*, and that the same was sold at the decretal sal- by the master in chancery by and under said decree, and was deraigned to your oratrix by regular mesne conveyances from said master's sale.

And your orator would show the amounts for which each of said 3 several tracts of land were sold at said master's sale, viz: N. E. ¼ of S. W. ¼ of sec. 4, T. 1 S., R. 8 E., $120.00; S. W. ¼ of S. W. ¼ of sec. 8, T. 1 N., R. 8 E., $160.00; N. E. ¼ of sec. 21, T. 2 S., R. 9 E., $1,320.00.

And your orator avers that on April 20th, 1859, the county of Wayne being then the owner of all of said lands, did by its county authorities execute a mortgage and also a trust deed to a large proportion of its swamp and overflowed lands to one Isaac Seymour, in trust to secure the payment of sundry railway construction bonds, and that all of the lands specially-numerated herein were included in said deed of trust and mortgage, and that the decree of
293 foreclosure hereinbefore recited was the foreclosure of the aforesaid trust deed and mortgage.

And your orator sets forth that after the county of Wayne had thus executed the aforesaid trust deed and mortgage it did sell and convey its equity of redemption of, in, and to the said tracts of land as follows, viz., N. E. ¼ of S. W. ¼ of sec. 4, T. 1 S., R. 8 E., to J. J. R. Turney, on Dec. 3, 1864; S. W. ¼ of S. W. ¼ of sec. 8, T. 1 N., R. 8 E., to A. B. McNamara, on Dec. 8, 1864, and the N. E. ¼ of sec. 21, T. 2 S., R. 9 E., to Dan'l McCawley, on October 19, 1865, and they respectively, either directly or through mesne conveyances, conveyed to these several parties, viz., Joshua Foster, J. W. Atteberry, and M. A. Sturgis, who claim to be the owners absolutely of the said several tracts of land as fully, to all intents and purposes, as if said mortgage and trust deed had no existence.

And your orator states and sets forth that he has reason to believe, and doth believe, that unless the said M. A. Sturgis and J. W. Atteberry respectively are restrained and enjoined by this court that they and each of them will implead your orator in the said
294 circuit court of Wayne connty, and will seek to set aside the decree of this court of June 25th, 1874, so far as the same relates to the said above-named tracts of land.

In view, therefore, of the premises, and inasmuch as your orator is remediless save in a court of equity, he prays that the said M. A. Sturgis may be made an additional party to this bill and duly served with process, and that he may be compelled to answer all the allegations of both the original and of this amended and supplemental bill, but without oath, his oath being expressly waived, and that a day may be fixed for said party to redeem said land from said decretal sale or stand forever foreclosed; or, in the alternative, that said land shall be sold under decree of foreclosure of

this court, upon such terms as to redemption and otherwise as to this court may seem just and equitable, and that at the final hearing of said bill a decree may be made quieting and confirming the title to all of the lands herein specified in your orator, and perpetually enjoining all of said parties and the said H. Tompkins from taking any measures to disturb, arraign,
295 attack, or invalidate said decree of June 24, 1874, in any court or elsewhere, and for such order as will annul and set at naught the decree of said Wayne county circuit court as to said N. E. ¼ of S. W. ¼ of sec. 4, T. 1 S., R. 8 E., and for such other & further relief as may be proper in the premises.

WILLIAM L. RALSTON,
By HENRY C. WHITNEY, *His Sol.*

HENRY C. WHITNEY,
Solicitor & of Counsel.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Henry C. Whitney, being first duly sworn, saith on oath that he — both heard read and been made acquainted with the matters and things set forth and averred in the above and foregoing bill, and that such matters and things are true except where the same are stated on information and belief, and so much and such parts thereof this affiant believes to be true.

HENRY C. WHITNEY.

Subscribed and sworn to before me this 12th day of February, A. D. 1885.

D. W. MITCHELL. [SEAL.]

(Endorsed:) Filed February 13, 1885. J. A. Jones, clerk.

296 And on, to wit, the same day and year last aforesaid (February 13th, 1884), being Friday, and at the January term of said court, the following proceedings were had in said cause and entered of record in said court, to wit:

Leave Granted to James C. Cloyd to File Amended Bills.

JAMES C. CLOYD
vs.
CLARRISSA JORDAN *et al.* } In Chancery.

On motion of complainant, by H. C. Whitney, Esq., his solicitor, leave is granted to file amended bills of complaint herein.

297 And also on the same day and year last aforesaid (to wit, Feb. 13, 1885), came the complainant, James C. Cloyd, by Walter B. Scates, Esq., his solicitor, and filed in said clerk's office his intervening petition and exhibits in said cause; which said intervening petition and exhibits are in the words and figures following, to wit:

Intervening Petition of James C. Cloyd.

In the Circuit Court of the United States within and for the Southern District of Illinois, *ss.*

To the honorable judges of said court, in chancery sitting:

Your orator, James C. Cloyd, who is a citizen of the State of New York, files this his intervening petition, by leave of court, &c., in the suit now depending and undetermined in this court, wherein your orator is already a complainant and Clarissa Jordan and others are defendants; and thereupon your orator complains and says that on the fifth day of February, A. D. 1885, your orator acquired by conveyance from one Walter B. Scates and is now the owner by title in fee of the lands hereinafter specified, situate and being in Wayne county, Illinois, and in the district aforesaid; and your ora-
298 tor saith that all of said lands were embraced and included in a mortgage and trust deed made, executed, acknowledged, delivered, and recorded by the properly authorized authorities of Wayne county to one Isaac Seymour, as trustee, on April 20th, 1859, to secure payment of sundry construction bonds of the Mount Vernon Railroad Company and the conditions of which mortgage and trust deed were broken and forfeited; and your orator avers that on the 7th day of April, A. D. 1865, fo-r several parties, to wit, Joseph W. Ward, John W. Kennicott, Ebenezer W. Stone, and Thomas Upham, who held and were owners of sundry of said construction bonds of said Mt. Vernon R. R. Co., filed their bill in chancery in this honorable court, setting forth in legal language, as the facts then were, that they severally held sundry of said bonds; that the condition of said mortgage and trust deed had become broken by non-payment of the interest of said bonds; that Isaac Seymour, the said trustee, had died, and praying for a discovery and for such relief as the nature of the case demanded, and said
299 parties, likewise, at the same time filed copies of said trust deed and mortgage as a part of said bill.

And your orator shows that the said county of Wayne was only served with process of this court in said cause on the 11th day of March, A. D. 1865, and was again served with process therein on the 23rd day of May, 1865.

And your orator shows that several amendments were made and filed in said cause from time to time and new bondholders were from time to time added as party complainants to said cause by amended bills, and that the said county of Wayne appeared in said cause by filing a demurrer in said cause, and made answer therein on the 7th day of December, A. D. 1870, and that the said cause progressed to a hearing, and a final decree of foreclosure was had and entered of record on or about June 24th, 1874, in this honorable court; all of which proceedings now here of record, reference being thereunto had, will more fully and at large appear.

And your orator would show that in pursuance of said decree of

foreclosure and the orders therein contained all of the above
300 and other land contained as well in said trust deed and mortgage as in said decree of foreclosure were duly sold under a decretal sale by the master in chancery of this court on the 18th day of September, A. D. 1877, and were all purchased by Stephen A. Goodwin, Norman M. Broadwell, Isaac Taylor, Samuel J. Crooks, and Richard P. Glenn, they being the highest and best bidders at said decretal sale, and that said master's sale was duly confirmed by this court; also that said purchasers assigned their certificate of purchase to said lands to one Norman M. Broadwell, and the said master in chancery, in default of redemption of said lands, made, executed, acknowledged, and delivered a deed therefor to said Norman M. Broadwell, which was duly filed for record and recorded, and that your orator deraigns title to said lands by regular mesne conveyances from said marshal's sale.

And your orator shows that after the making and recording of the said trust deed and the said mortgage in the proper recorder's office of Wayne county, and after the commencement of the
301 suit to foreclose the same, and after the service of process upon the county of Wayne in said suit, the county of Wayne, by conveyance of quitclaim, conveyed its residuary interest or equity of redemption of, in, and to said lands to sundry persons in detail and by separate tracts, and those purchasers in some cases sold the said tracts again, and in some instances the same were sold more than once; and your orator annexes hereto, marked Exhibit "A," a list of all said lands by numbers, together with a list of purchasers from the said Wayne county of said residuary interests and dates of said purchase, together with names respectively of present owners, so far as he can trace them respectively, which he prays may be taken as part hereof.

And your orator would show that one H. Tompkins, Robert P. Hanna, and C. C. Boggs, all attorneys of this court, from time to time and persistently advised these purchasers of said residuary interests from the county of Wayne and their assigns to claim adversely to your orator's grantors and to said decree of fore-
302 closure and to utterly ignore said trust deed and mortgage and the decree of foreclosure of this honorable court based thereupon; and said purchasers of said residuary interests embraced said advice and all worked in harmony, and still do degrade, vilify, ignore, and disregard said decree of foreclosure, as are made *and* manifest*ation of* the operation of these persons. Sundry thereof employed the said Tompkins for contingent fees to institute suits in the State circuit court within and for Wayne county, setting forth that said claimants respectively were the respective owners of said tracts of land by an absolute title in fee derived from said Wayne county, and that said decree of foreclosure of this honorable court and the mortgage and trust deed upon which the same was founded were all void and of none effect, and praying that all thereof might be removed as clouds upon the said titles respectively of said claimants, all of which are still depending and undetermined in said Wayne county circuit court.

And your orator annexes hereto an exhibit, marked Ex-
303 hibit "B," showing the names of said suitors and the tracts of land involved therein, which he prays may be taken as part hereof.

And your orator shows that it is pretended by said litigant parties that said suit to foreclose the mortgage and trust deed was not commenced on said March 7th, 1865, and that in fact said suit to foreclose was not commenced until 1870, so as to bind or conclude any one except Wayne county alone; and they pretend also that no decree of foreclosure has been had at all which binds or concludes them; all of which pretences your orator avers to be false, and he prays the judgment of the court thereon.

And your orator, further complaining, would show that sundry of said tracts of land are improved tracts, and that the same severally have been in the possession and use of these persons so claiming adversely, and that none thereof have paid any rent therefor or on account thereof; and your orator annexes hereto and prays to be taken as part hereof an exhibit of said tracts and persons claiming the same, marked "C" and made part hereof.

304 And your orator further shows that in many cases the said H. Tompkins, without any authority whatever, has claimed and pretended that he had authority to sell and dispose of and to use the timber on said lands, and has sold and disposed of the same and has used and destroyed the same and is still doing so; and your orator avers that said Tompkins is insolvent and irresponsible, and that unless your orat*rix* can secure the protection of this honorable court he will be irremediably and irreparably damaged.

And your orator shows that the said Tompkins makes use of the public press of Wayne county and of public harrangues to decry and bring into contempt the decree of this honorable court, and your orator annexes hereto and prays to be taken as part hereof sundry newspaper articles published by said Tompkins on that subject, which he *makes* "D" collectively and makes part hereof.

And your orator refers to a copy of a bill in chancery filed in said Wayne circuit court, exhibited by one Lucinda A. Walker in this or one of its consolidated causes, and prays that the same
305 may be considered by this court as a copy of similar bills filed by said Tompkins in the causes pending in said Wayne circuit court against your orator and your orator's grantor.

And your orator avers that unless the protection of this court can be had the said litigant parties in the said Wayne circuit court will press their several suits to a conclusion against your orator, and he hath reason to fear and doth fear that all of said parties so averring or having acquired the equity of redemption aforesaid will bring suits to bring in question in the Wayne circuit court and seek to cancel and annul the decree of this honorable court; and your orator would show that in a suit pending in said Wayne circuit court wherein one J. B. Scudamore was complainant and Henry C. Whitney was defendant the said State circuit court held and adjudged, in a square issue made, that the said suit to foreclose the said trust deed and mortgage was not commenced in this honorable court until

the year 1870 so as to bind or conclude anybody save and ex-
306 cept Wayne county alone; and your orator hath reason to believe and doth believe that the judgment of said State circuit court will be the same in all cases when parties are permitted to arraign and bring before said State court for review the decree of this honorable court; and your orator avers that if such proceeding is suffered to proceed it will totally and absolutely annul, destroy, and set at naught the decree of this court, inasmuch as every tract of land embraced in said decree was entirely ceded away by said county before the year 1870.

And your orator further shows that said Tompkins is insolvent, and that no judgment could be collected from him even if judgment could be obtained against him, and that many of the said claimants of the said lands are likewise insolvent, as your orator is informed and so believes.

Your orator, remediless save in a court of chancery, where matters of this kind are cognizable and relievable, asks the aid of this court in the premises, and would pray that all the parties who are specified by name in the schedule hereto annexed, marked
307 "E" and made part hereof, may be made parties defendant to this suit with apt and proper words to charge them, and that a subpœna in chancery may issue out of and under the seal of this honorable court commanding them and each of them to be and appear before this honorable court on the next rule day, then and there to answer this bill and the several allegations thereof, but without oath, the answer under oath being hereby expressly waived, and that a temporary injunction may issue out of this court restraining and enjoining the said parties and each thereof from further prosecuting the said suits or any thereof in the said circuit court of Wayne county or elsewhere except in this court or in the Supreme Court of the U. S., or otherwise commencing or maintaining any suit the gramamen of which is to invalidate or bring into question the decree of this honorable court until further order hereof, and that at the final hearing of this cause it may be ordered, adjudged, and decreed that the title to each and all of said several tracts of land so enumerated herein may be quieted and confirmed in your orator; also that it may be declared and adjudged
308 that said suit to foreclose the said mortgage and trust deed was commenced on March 7th, 1865, and that if it was not then and there commenced that it may be found and adjudged when it was commenced, and that a perpetual injunction may issue out of and under the seal of this honorable court restraining and enjoining the said parties or any of them from bringing or maintaining any suit at law or in equity to invalidate, question, or descry the title derived under the decree of foreclosure of this honorable court, and that the said H. Tompkins may be both provisionally and permanently restrained and enjoined from further sales of or trespassing upon the timber standing upon said lands or any thereof, and that an accounting may be had and taken under direction of this court of the mesne profits arising from the uses of the aforesaid improved tracts of land and of the timber sold and cut upon

any of said lands by said Tompkins or others, and for such other and further relief as may be authorized by law.

JAS. C. CLOYD, *Complainant.*

By W. B. SCATES,
Sol'r for Compl't.

309 STATE OF ILLINOIS, } ss:
County of Cook, }

Walter B. Scates, being first duly sworn, on oath saith that he hath heard read and been made acquainted with the allegations of the foregoing bill, and the same are true except such as are stated upon information and belief, and such parts thereof this affiant believes to be true.

WALTER B. SCATES.

Subscribed and sworn to before me this 5th day of February, 1885.

[SEAL.] H. C. WHITNEY,
Notary Public.

(Endorsed :) Filed February 13, 1885. J. A. Jones, clerk.

EXHIBIT "A."

JAMES C. CLOYD *vs.* CLARISSA JORDAN *et al.*

Scates Foreclosed.

T. & R.	Sec.	Description.	Grantor.	Grantee.	Date.	Recorded.	Book.	Page.	Entry.	Remarks.—Present owners.
2 s, 6 e....	15	S e s e.....	County	Railroad	Oct. 13, 1868	June 15, 1872	28	219	.....	Chas. A. Beecher and Frank W. Tracey.
			I. S. E. R. R.	S. I. S. E. R. R....	July 29, '71	" " "	"	225		
			S. I. S. E. R. R.	C. A. Beecher	July 10, '71	May 31, "	"	232		
			County clerk	Francis W. Tracey	Aug. 4, '75	Jan. 6, '76	35	382		
	"	S w s w	County	Wm. Malone	June 30, '65	June 30, '65	R	497	.....	Wm. Malone.
	"	S ½ s e	"	G. M. McDougall	Nov. 27, '67	Nov. 27, '67	6	54	.....	G. M. McDougall.
3 s, 7 e.....	2	S w	"	I. S. E. R. R.	Oct. 13, '68	June 15, '72	28	222	.....	Douglass Putnam.
			I. S. E. R. R.	S. I. S. E. R. R.	July 29, '71	" " "	"	225		
			S. I. S. E. R. R.	C. A. Beecher	July 15, "	May 31, '72	"	232		
			C. A. Beecher	B. B. Frost	July 25, '72	Feb. 13, '73	"	528		
			B. B. Frost and wife	Douglass Putnam	March 9, '77	Sept. 18, '77	27	179		
			County clerk	F. W. Tracey	Aug. 4, '75	Jan. 6, '76	35	382		
			Tracey and wife	Douglass Putnam	Jan. 30, '77	Sept. 18, '77	37	177		
	4	N e s e.....	County	I. S. E. R. R.	Oct. 13, '68	June 15, '72	28	222	.....	Chauncey L Bowen, Oliver Tucker, and Wm. G. Woodford.
			I. S. E. R. R.	S. I. S. E. R. R.	July 29, '71	" " "	"	225		
			S. I. S. E. R. R.	C. A. Beecher	" 15, "	May 31, "	"	232		
			C. A. Beecher	B. B. Frost	" 25, '72	Feb. 13, '73	"	528		
311			County clerk	F. W. Tracey	Aug. 4, 1875	Jan. 6, 1876	35	382		
			Tracey & wife	Oliver Tucker, trustee..	Mar. 2, '77	Dec. 8, '77	37	185		
			Frost & wife	" "	" 9, '77	Nov. 14, "	"	268		
			Tucker & wife	C. L. Bowen, O. Tucker, & Wm. Woodford.	Oct. 10, '77	" 15, "	"	269		
	9	W ½ n w...	County	I. S. E. R. R.	" 13, '68	June 15, '72	28	222	.....	Chauncey L. Bowen, Oliver Tucker, and Wm. G. Woodford.
			I. S. E. R. R.	S. I. S. E. R. R.	July 29, '71	" " "	"	225		
			S. I. S. E. R. R.	C. A. Beecher	" 15, "	May 31, "	"	232		
			C. A. Beecher	B. B. Frost	" 25, '72	Feb. 13, '73	"	528		
			County clerk	F. W. Tracey	Aug. 4, '75	Jan. 6, '76	35	382		
			Tracey & wife	Oliver Tucker, trustee	Mar. 2, '77	Dec. 8, '77	37	185		
			Frost & wife	" "	" 9, '77	Nov. 14, "	"	268		
			Tucker & wife	C. L. Bowen, O. Tucker, & Wm. Woodford.	Oct. 10, "	" 15, "	"	269		
		N ½ s w)	County	I. S. E. R. R.	" 13, '68	June 15, '72	28	222		
	7	S e s w....)	I. S. E. R. R.	S. I. S. E. R. R.	July 29, '71	" " "	"	225		
			S. I. S. E. R. R.	C. A. Beecher	July 15, '71	May 31, "	"	232		

Exhibit "A"—Continued.

T. & R.	Sec.	Description.	Grantor.	Grantee.	Date.	Recorded.	Book.	Page.	Entry.	Remarks.—Present owners.
	7	S w s w.....	County	E. H. Brown.....	Nov. 27, '65	.....	.....	.....	.....	E. H. Brown.
1 s, 8 e.....	2	S w.....	"	W. B. Livingston.....	Oct. 11, "	Oct. 26, '65	R	605	.....	E. Jane Spence.
			Livingston	Wm. L. Beck.....	" " "	Nov. 8, "	"	616		
			Beck & wife.....	Luther Crocker.....	Nov. 15, "	Dec. 20, "	T	39		
			Crocker & wife.....	Edward Edmunds.....	Aug. 26, '68	Sept. 8, '68	W	321		
312			Edmunds & wife.....	E. J. Spence.....	Sept. 11, '71	" 16, '71	27	416		
3 s, 8 e.....	7	S e n w.....	County	I. S. E. R. R.	Sept. 13, 1868	June 15, 1872	28	222	.....	Wayne Co., Jacob S. Atteberry
			I. S. E. R. R	S. I. S. E. R. R.....	July 29, '71	" " "	"	225	.....	Reason B. Meeks.
			S. I. S. E. R. R.....	C. A. Beecher.....	" 10, '71	May 31, "	"	232		
			C. A. Beecher.....	County	Mar. 15, '72	Feb. 12, "	A	343		
			J. S. Atteberry.....	Entered.....	July 20, '51	.....	.....	17	July 25, '51	
			Louisa Atteberry.....	Reason B. Meeks.....	May 21, '62	May 24, '62	.....	498		
			Sam'l " adm'r.....	" "	Aug. 13, "	Aug. 13, "	.....	588		
1 s, 9 e.....	21	S w n w.....	County	Leander Ensley.....	May 2, '67	May 2, '67	U	303	.....	Leander T. Ensley & Kate Ensley.
	"	N ½ s w.....	"	James C. Ensley.....	" 19, '66	" 19, '66	T	335	.....	Isaac Ensley, n e s w.
			Ensley & wife	Isaac Ensley	Nov. 4, '69	Nov. 10, '69	Y	326	.....	Elizabeth Ensley, n w s w.
			Ensley & wife	Elizabeth Ensley.....	June 8, '72	Dec. 20, '77				
	"	S e s w.....	County	James C. Ensley.....	May 19, '66	May 19, '66	T	335	.....	Nesbit & Price.
			Ensley & wife	Isaac Ensley.....	Nov. 4, '69	Nov. 10, '69	Y	326		
			Ensley & wife	Nesbit & Price.....	June 8, '72	June 18, '72	Z	616		
		S w s w.....	County	S. J. R. Wilson.....	Nov. 20, '65	Nov. 20, '65	R	138	.....	Elisha Taylor.
			Wilson & wife	Ebenezer Trotter.....	Jan. 4, '71	Feb. 8, '71	X	607		
			Trotter & wife.....	Oliver Harper.....	Oct. 25, '71	" 19, '72	Z	409		
			Harper & wife	Elisha Taylor.....	Dec. 9, '71	" " "	28	54		
	22	S e.....)	County	I. S. E. R. R.....	Oct. 13, '68	June 15, "	"	222	.....	Chauncey T. Bowen,
		S ½ n w..)	I. S. E. R. R.....	S. I. S. E. R. R.....	July 29, '71	" " "	"	225	.....	Oliver Tucker, and
	28	E ½ n w.)	S. I. S. E. R. R.....	C. A. Beecher.....	" 10, "	May 31, "	"	232	.....	Wm. G. Woodford.
313			Beecher	B. B. Frost.....	July 25, 1872	Feb. 13, 1873	28	528		
			County clerk	F. W. Tracey.....	Aug. 4, '75	Jan. 6, '76	35	382		
			Tracey & wife.....	Oliver Tucker, trustee.....	Mar. 12, '77	Sept. 28, '77	37	185		
			Frost & wife.....	" " "	" 9, '77	Nov. 14, "	"	68		
			Tucker, trustee.....	Chauncey L. Bowen, Wm. G. Woodford, and O. Tucker.	Oct. 10, '77	" 15, "	"	269		
	"	N w n w...	County	S. J. R. Wilson.....	Nov. 20, '65	" 20, '65	R	638	.....	Ebenezer Trotter.
			Wilson & wife	Ebenezer Trotter.....	Jan. 4, '71	Feb. 8, '71	K	607		
	29	S e n e.....	County	Vincent Shelton.....	Aug. 24, '69	Dec. 31, '69	Y	377	.....	Stirling M. Hill and heirs of Shelton.

2 s, 9 e.....	3	N ½ n w...	Sheriff of Wayne Co.....	James Lane.....	Aug. 29, '66	Aug. 29, '66	T	511	.....	Preston R. King.
			Lane & wife.....	Sarah Wilkinson.....	Nov. 22, '69	Nov. 26, '69	Z	342	.....	School trustees dist. No. 4, of
			Sarah Wilkenson & Wm. R. King & wife.....	Preston R. King.....	Aug. 21, '72	Aug. 28, '72	28	278	.....	town. 2 s, 9 e, and
			Jas. Johnson & wife	School district No. 4.....	Aug. 27, '66	Mar. 27, '67	U	241	.....	Sarah St. Leger.
	"	S w n w....	County	Thos. St. Leger.....	Feb. 23, '76	" 15, '76	35	504	.....	
	12	E ½ n w..	"	S. Briscoe.....	Sept. 9, '67	Sept. 9, '67	Q	514	.....	S. Briscoe.
		W ½ s w...	"	Dan'l L. McCawley.....	Oct. 19, '65	Oct. 27, '65	R	599	.....	D. L. McCawley.
			McCawley & wife.....	John G. Pettigrew.....	" " "	" " "	"	"	.....	John G. Pettigrew.
			J. G. Pettigrew	Thos. Pettigrew.....	Feb. 17, "	Feb. 17, "	S	43		
			Thos. Pettigrew & wife.....	John G. Pettigrew.....	Oct. 4, '69	Oct. 20, '70	27	19		
	"	W ½ n w...	County	D. L. McCawley.....	" " "	" " "	"	"		
			McCawley & wife.....	John G. Pettigrew.....	" 9, '65	" 27, '65	R	599	.....	John G. Pettigrew and
	13	N w n w....	County	D. L. McCawley.....	Feb. 17, "	Feb. 17, "	S	43	.....	Andrew J. Pettigrew and
314			Mc awley & wife.....	A. E. Scott.....	Oct. 19. "	Oct. 27, "	R	599	.....	A. E. Scott.
			Alfred W. Elliott.....	Solomon W. Mitchell.....	Dec. 21, 1868	Dec. 24, 1868	Y	10	.....	Solomon W. Mitchell.
	32	N ½ s w.....		Isaac Merritt, entered.....	Oct. 8, '69	Mar. 5, '75	33	469		
		N w s w....	County	D. L. McCawley	Nov. 19, '63	.....	.....	.....	.....	Isaac Merritt.
1 n, 8 e.....	6	N e s w.....	"	I. S. E. R. R	Oct. 19, '65	.....	.....	.....	.....	D. L. McCawley & L. H. Harris.
1 n, 9 e.....	23	N e n w....	"	I. S. E. R. R	Oct. 13, '68					
2 s, 6 e.....	26	E ½ s e....	"	I. S. E. R. R	" " "					
	"	S w s e....	"	I. S. E. R. R	" " "					
1 s, 9 e.....	20	S e n e.....	"	Dan'l Haynes.....	Nov. 30, '67					

315 EXHIBIT "B" TO INTERVENING PETITION OF JAMES C. CLOYD.

JAMES C. CLOYD *vs.* CLARISSA JORDAN *et al.*

Exhibit "B," Referred to in Bill.

1. A. J. Pettigrew *vs.* Walter B. Scates, S. W. ¼ of N. W. ¼ of section twelve, T. 2 S., R. 9 E.
2. Sarah A. St. Leger *vs.* Walter B. Scates, W. ½ of N. E. ¼ of section three, T. 2 S., R. 9 E.
3. Kate Ensley *vs.* Walter B. Scates, N. ½ of S. W. ¼ of sec. 21, S. W. ¼ of N. W. ¼ of sec. 21, T. 1 S., R. 9 E.
4. Sterling M. Hill *vs.* Walter B. Scates, S. E. ¼ of N. E. ¼ of section twenty-nine, T. 1 S., R. 9 E.
5. L. H. Harris *vs.* Walter B. Scates, N. W. ¼ of S. W. ¼ of section thirty-two, T. 2 S., R. 9 E.

EXHIBIT "C" TO INTERVENING PETITION OF JAMES C. CLOYD.

JAMES C. CLOYD *vs.* CLARISSA JORDAN *et al.*

Exhibit "C."

List of Foreclosed Improved Tracts.

T. & R.	Sec.	Des.	Present claimant.
3 s, 7 e			John R. Murphy.
	7	S w	F. W. Tracey, E H. Brown.
3 s, 8 e	7	S e n w	R. B. Meeks, Wayne Co.; Jacob S. Atteberry.
1 s, 9 e	21	S w n w	Kate Endsley.
	"	N ½ s w	" "
	"	S w s w	" "
	"	S e s w	Nesbitt & Price.
2 s, 9 e	3	N ½ n w	Sarah St. Leger, sch. trus. of dis. 4, 2 S., 9 E.
	"	S w n w	S. Briscoe.
	12	W ½ n w	Andrew Pettigrew.
316	12	N e n w	D. L. McCawley.
	"	W ½ s w	John J. Pettigrew.
	13	N w n w	A. E. Scott, S. W. Mitchell.
	32	N e s w	D. L. McCawley, Isaac Merritt, L. H. Harris.
	"	N w s w	" " "

EXHIBIT "E" TO INTERVENING PETITION OF JAMES C. CLOYD.

Exhibit "E."

James C. Cloyd *vs.* Jordan *et al.*, being names of parties defendants who are to be served with process:

Charles A. Beecher, Frank W. Tracey, William Malone, G. McDougall, Douglass Putnam, Israel Waters, Chauncey L. Bowen, Oliver Tucker, William G. Woodford, E. H. Brown, E. Jane Spence, Wayne County, Jacob S. Atteberry, Reason B. Meeks, Kate Endsley,

Elizabeth Ensley, Isaac Ensley, Leander T. Ensley, Thomas Nesbitt, —— Price, Elisha Taylor, Ebenezer Trotter, Heirs of Vincent Shelton, Preston R. King, School Trustees of District 4, T. 2 S., R. 9 E.; Sarah A. St. Leger, S. Briscoe, Daniel L. McCawley, Jno. G. Pettigrew, Andrew J. Pettigrew, H. E. Scott, Solomon W. Mitchell, Isaac Merritt, L. H. Harris, Dan'l H. Haynes, H. Tompkins, Robert P. Hanna, C. C. Boggs.

Petition and Exhibits A, B, C, & E.

(Endorsed:) Filed February 13, 1885. J. A. Jones, clerk.

317 And also on the same day and year last aforesaid, to wit, Feb. 13, 1885, came Lucinda A. Walker, by H. C. Whitney, Esq., her solicitor, and filed in said clerk's office her intervening petition and Exhibits A, B, & C thereto; which said intervening petition and exhibits are in the words and figures following, to wit:

Intervening Petition of Lucinda A. Walker.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

Circuit Court of the United States within and — the 7th Circuit & Southern District of Illinois.

To the honorable judges of said court, in chancery sitting:

Your oratrix, Lucinda A. Walker, who is a citizen of Massachusetts, now here comes, by leave of court for that purpose first had and obtained, and intervenes in a suit on the equity side of this court, wherein Elizabeth H. Taylor *et al.* are complainants and John W. Atteberry *et al.* are defendants; and thereupon your oratrix complains and says that heretofore, to wit, on the 28th day of November, A. D. 1884, the said Elizabeth H. Taylor conveyed to your
318 oratrix and your oratrix is now the owner of the following-described lands, situate and being in Wayne county, Illinois, in the district aforesaid, to wit: S. E. ¼ of S. E. ¼ of sec. 22, T. 1 S., R. 5 E.; N. E. ¼ of S. E. ¼ of sec. 10, N. W. ¼ of S. E. ¼ of sec. 19, N. ½ of N. W. ¼ of sec. 36, all in T. 2 S., R. 6 E.; N. W. ¼ of S. E. ¼ of sec. 2, N. E. ¼ of S. E. ¼ of sec. 9, S. E. ¼ of sec. 12, all in T. 3 S., R. 7 E.; W. ½ of S. E. ¼ of sec. 7, T. 3 S., R. 8 E.; S. W. ¼ of S. E. ¼ of sec. 13, W. ½ of N. W. ¼ of sec. 25, N. W. ¼ of N. E. ¼ of sec. 25, E. ½ of N. E. ¼ of sec. 26, S. W. ¼ of N. W. ¼ of sec. 26, N. E. ¼ of S. E. ¼ of sec. 34, N. ½ of S. W. ¼ of sec. 36, all in T. 1 S., R. 9 E.; also N. E. ¼ of S. E. ¼ of sec. 2, S. W. ¼ of sec. 4, all in T. 2 S., R. 9 E.; all of sec. 12, T. 3 S., R. 9 E.; S. E. ¼ of N. E. ¼ of sec. 28, T. 1 N., R. 8 E.; S. W. ¼ of N. W. ¼ of sec. 1, T. 1 N., R. 9 E.; N. E. ¼ of S. E. ¼ of sec. 28, all in T. 2 N., R. 9 E.; also S. E. ¼ of sec. 3, T. 3 S., R. 7 E., and that the deed is on record in the proper recorder's office of Wayne Co.

And your oratrix avers that the most, if not all, of said tracts are already embraced in the said suit of Elizabeth H. Taylor *et al. vs.* John W. Atteberry *et als.*, and your oratrix prays that she may be

substitu-ed for the said Elizabeth H. Taylor as the owner of said tracts, and for the relief prayed in reference thereto.

319 And your oratrix further shows unto your honors that on the 28th day of November, A. D. 1884, one Henry C. Whitney, being then the owner of sundry other tracts of land situate and being in Wayne county, Illinois, and in the district aforesaid, conveyed the same to your oratrix by title in fee and she is now the owner thereof, to wit: N. ½ of N. W. ¼ of sec. 8, N. E. ¼ of S. E. ¼ of sec. 9, N. W. ¼ of S. E. ¼ of sec. 25, N. E. ¼ of N. E. ¼ of sec. 35, all in T. 1 S., R. 5 E.; S. W. ¼ of N. E. ¼ of sec. 10, S. W. ¼ of S. E. ¼ of sec. 10, N. W. ¼ of S. W. ¼ of sec. 28, all in T. 2 S., R. 5 E.; S. E. ¼ of N. W. ¼ of sec. 19, N. W. ¼ of N. W. ¼ of sec. 20, N. W. ¼ of N. E. ¼ of sec. 21, N. ½ of S. E. ¼ of sec. 21, S. E. ¼ of sec. 25, N. W. ¼ of N. E. ¼ of sec. 25, N. W. ¼ of sec. 25, S. W. ¼ of S. W. ¼ of sec. 30, E. ½ of N. E. ¼ of sec. 30, N. E. — of S. E. ¼ of sec. 35, S. E. ¼ of S. W. ¼ of sec. 35, S. W. ¼ of sec. 26, all in T. 2 S., R. 6 E.; sec. 6, T. 3 S., R. 7 E.; N. W. ¼ of sec. 3, N. ½ of sec. 12, E. ½ of N. E. ¼ of sec. 13, all in T. 1 S., R. 8 E.; W. ½ of N. E. ¼ of sec. 7, N. W. ¼ of N. W. ¼ of sec. 8, S. E. ¼ of N. E. ¼ of sec. 10, E. ½ of S. E. ¼ of sec. 10, N. W. ¼ of S. E. ¼ of sec. 10, S. ½ of N. W. ¼ of sec. 12, S. W. ¼ of N. E. ¼ of sec. 12, S. W. ¼ of S. E. ¼ of sec. 15, S. W. ¼ of N. E. ¼ of sec. 25, S. E. ¼ of N. W. ¼ of sec. 26, N. ½ of N. W. ¼ of sec. 26, N. ½ of sec. 33, S. W. ¼ of S. W. ¼ of sec. 36, undivided ½ of W. ½ of S. W. ¼ of sec. 33, all in T. 1 S., R.

320 9 E.; N. ½ of N. W. ¼ of sec. 1, S. ½ of S. W. ¼ of sec. 2, S. W. ¼ of sec. 4, S. ½ of S. W. ¼ of sec. 27, undivided ½ of N. W. ¼ of sec. 21, S. W. ¼ of S. E. ¼ of sec. 32, undivided ½ of N. W. ¼ of S. E. ¼ of section 32, undivided ½ of E. ½ of S. E. ¼ of sec. 32, all in T. 2 S., R. 9 E.; N. E. ¼ sec. 10 & N. W. ¼ of S. E. ¼ of sec. 26, all in T. 1 N., R. 9 E., and that the deed is on record in the recorder's office in Wayne Co.

And your oratrix showeth that all of the lands hereinbefore set forth as being acquired by her through either conveyance were embrased and included in a decree of foreclosure rendered in and by this court on June 25th, 1874, in the suit of John W. Kennicott *et al. vs.* Board of Supervisors of Wayne County *et al.*, and that all of said lands were sold at the decretal sale by the master in chancery by and under said decree, and were all deraigned to your oratrix by regular mesne conveyances from said master's sale.

And your oratrix shows in detail the several and respective amounts which were bid at said master's sale and for which each tract was sold, viz: I- T. 1 S., R. 5 E., S. E. ¼ of S. E. ¼, sec.

321 22, $320.00; in T. 2 S., R. 6 E., N. E. ¼ of S. E. ¼, sec. 10, $440.00; N. W. ¼ of S. E. ¼ of sec. 19, $360; N. ½ of N. W. ¼ — 36, $480.00; in T. 3 S., R. 7 E., N. W. of S. E., sec. 2, $480.00; N. E. of S. E. of sec. 9, $320.00; S. E. ¼ of sec. 12, $960.00; in T. 3 S., R. 8 E., W. ½ S. E. 7, 520.00; in T. 1 S., R. 9 E., S. W. ¼ of S. E. ¼, sec. 13, $720.00; W. ½ of N. W. ¼ of sec. 25, $480.00; N. W. ¼ of N. E. ¼ of sec. 25, $240.00; E. ½ of N. E. ¼ of sec. 26, $480.00; S. W. ¼ of N. W. ¼ of sec. 26, $240.00; N. E. ¼ of S. E. ¼ of sec. 34, $240.00; N. ½ of S. W. ¼ of sec. 36, $960.00. in T. 2 S., R. 9 E., N. E. ¼ of S. E. ¼ of sec. 2, $400.00; S. W. ¼, sec. 4, $1,440.00; in T. 3 S., R. 9 E.,

sec. 12, $2,560.00; in T. 1 N., R. 8 E., S. E. ¼ of N. E. ¼ of sec. 28, $240; I- T. 1 N., R. 9 E., S. W. ¼ of N. W. ¼ of sec. 1, $279.26; in T. 2 N., R. 9 E., N. E. ¼ of S. E. ¼, sec. 28, $240; in T. 3 S., R. 7 E., S. E. ¼ sec. 3, $1,120; in T. 1 S., R. 5 E., N. ½ of N. W. ¼ of sec. 8, $800.00; N. E. ¼ of S. E. ¼ of sec. 9, $240.00; N. E. ¼ of N. E. ¼ of sec. 35, $360.00; N. W. ¼ of S. E. ¼ of sec. 25, $400.00; in T. 2 S., R. 5 E., S. W. ¼ of N. E. ¼ of sec. 10, $320.00; S. W. ¼ of S. E. ¼ of sec. 10, $240.00; N. W. ¼ of S. W. ¼ of sec. 28, $480.00; in T. 2 S., R. 6 E., S. E. ¼ of N. W. ¼ of sec. 19, $457.92; N. W. ¼ of N. W. ¼ of sec. 20, $480; N. W. ¼ of N. E. ¼ of sec. 21, $240; N. ½ of S. E. ¼ of sec. 21, $480; S. E. ¼ of sec. 25, $960.00; N. W. ¼ of N. E. ¼ of sec. 25, $240.00; N. W. ¼ of sec. 25, $960; S. W. ¼ of S. W. ¼ of sec. 30, $240.00; E. ½ of N. E. ¼ of sec. 30, $480; N. E. ¼ of S. E. ¼ of sec. 35, $240; W. ½ of S. E. ¼ of sec. 35, $480.00; S. E. ¼ of S. W. ¼ of sec. 35, $240; S. W. ¼ of sec. 26, $960; in T. 3 S., R. 7 E., all of
322 sec. 6, $1,440.12; in T. 1 S., R. 8 E., N. W. ¼ sec. 3, $193.12, N. ½ sec. 12, $1,920; E. ½ N. E. ¼ 13, $800; in T. 1 S., R. 9 E., W. ½ of N. E. ¼ of sec. 7, $477.36; N. W. ¼ of N. W. ¼ of sec. 8, $240; S. E. ¼ of N. E. ¼ of sec. 10, $560; E. ½ of S. E. ¼ of sec. 10, $480; N. W. ¼ of S. E. ¼ of sec. 10, $240; S. ½ of N. W. ¼ of sec. 12, $480, S. W. ¼ of N. E. ¼ of sec. 12, $240; S. W. ¼ of S. E. ¼ of sec. 15, $240; S. W. ¼ of N. E. ¼ of sec. 25, $240; S. E. ¼ of N. W. ¼ of sec. 26, $240; N. ½ of N. W. ¼ of sec. 26, $480; N. ½ of sec. 33, $1,920; S. W. ¼ of S. W. ¼ of sec. 36, $480; undivided ½ of W. ½ of S. W. ¼ of sec. 33, $240; in T. 2 S., R. 9 E., N. ½ of N. W. ¼ of sec. 1, $1,003.20; S. ½ of S. W. ¼ of sec. 2, $800; S. W. ¼ of sec. 4, $1,420; S. ½ of S. W. ¼ of sec. 27, $480; undivided ½ of N. W. ¼, sec. 21, $480; S. W. ¼ of S. E. ¼ of sec. 32, $240; undivided ⅓ of N. W. ¼ of S. E. ¼ of sec. 32, $120; undivided — of E. ½ of S. E. ¼ of sec. 32, $240; in T. 1 N., R. 9 E., N. E. ¼ of sec. 10, $960; N. W. of S. E. ¼ of sec. 26, $240.

But your oratrix sets forth that the sale at said master's decretal sale was, according to certain subdivisions not in all cases corresponding to the above, but she has, as she verily believes, stated the proportions which the above and foregoing sums bore to the amount for which the same were sold at said decretal sale.

323 And your oratrix states and sets forth that on April 20th, 1859, the county of Wayne, being then the owner of all of said lands, did, by its county authorities, execute a mortgage and a trust deed to all or a large proportion of its swamp and overflowed lands to one Isaac Seymour, in trust to secure the payment of sundry railway construction bonds, and that all of the lands specially enumerated herein were included in said deed of trust and mortgage, and that the decree of foreclosure hereinbefore recited was the foreclosure of the trust deed and mortgage aforesaid.

And your oratrix saith that after the county of Wayne had thus executed the mortgage and trust deed aforesaid it likewise, between the said 20th of April, 1859, and the 13th day of October, A. D. 1868, did sell and convey its residuary interests or equity of redemption to divers and sundry persons, and a portion of these purchasers resold their said acquired interests, and the same were in some instances sold more than once; and the several persons so de-

riving their claim through the purchase of the said residuary interests or equity of redemption, either directly or mediately, claim
324 to be the absolute and unqualified owners of the fee to said several tracts of land, and claim and assert that the decree of this honorable court of June 25th, 1874, did not bind, conclude, or affect them, and that the same was null and void so far as they are concerned respectively.

And your oratrix annexes hereto an exhibit of said lands showing when the county conveyed its equity of redemption to each tract respectively and to whom, and, so far as your oratrix is enabled to do it, the present claimant thereof; which exhibit she marks "A" and makes part of this bill.

And your oratrix shows that one H. Tompkins, an attorney of this court, has made it his chief business for a series of years last past to circulate among said purchasers of and claimants under said residuary interests of the said Wayne county and descry the said decree of this honorable court and advise said persons to disregard the same, and in many instances he has induced many of said persons to bring suits in the circuit court of Illinois for Wayne county to attack and annul said decree so far as they were concerned;
325 and your oratrix avers that in four several of said cases the said circuit court granted decrees annulling the decree of this honorable court as to the tracts specified in said suits respectively, said decrees having been granted at the October term, A. D. 1884, of said circuit court; and your oratrix avers that all of said suits, except such as decrees were taken in, are still pending, and that the said H. Tompkins and one R. P. Hanna, also an attorney of this court, are the managing attorneys therein; and your oratrix avers that the decrees aforesaid thus taken in said Wayne county circuit court were so taken after the acquisition by your oratrix of the title to said lands, and she states, upon advice of counsel and upon belief, that such action of the State court was an invasion of and an assumption of the powers, authority, and dignity of this court and of your oratrix's rights herein.

Your oratrix annexes hereto and prays to be taken as part hereof an exhibit showing the suits now depending against the tracts of land so owned by your oratrix, together with the names of the complainants in said suits respectively; which exhibit she marks "B." She likewise separates those suits in which decrees
326 have been entered and appends them in a note at the foot of said exhibit, and she files herewith as Exhibit "C" and makes part hereof copy of one of the bills in which said litigants arraign said decree of this court.

And your oratrix, further complaining, would show that all of the said suits so depending will be pressed to a speedy conclusion, and in many, if not all, of said cases decrees will be obtained against the lands aforesaid and the decree of this court annulled and set at naught unless this court interferes to prevent the same; and your oratrix states, upon information and advice of counsel and upon belief, that said parties have no right to attack the decree — honorable court, collaterally or otherwise, in another court of no greater

powers, nor in any other way, except by a direct bill in this court, to impeach the same, or by appeal to the U. S. Supreme Court.

Your oratrix, being without adequate remedy save in this honorable court, prays that the said H. Tompkins, R. P. Hanna, John Garrison, George Warren, Lynia J. Branson, D. H. Clevinger, Simeon
327 Matthews, John Keen, Sr., S. L. Austin, George B. Meyers, J. B. Scudamore, Samuel Booth, Charles Iles, Sarah A. St. Leger, Ann Walker, L. A. Skinner, L. H. Harris, Hiram Tucker, Henry T. Garrison, G. A. Bradford, Mary C. Given, Joshua Cook, John Dunham, Allen Lence, Anderson Malone, Douglass Putnam, Israel Waters, W. J. Kingkendall, W. N. Dickey, J. B. Pendleton, Oliver Holmes, John Robinson, C. M. Wakefield, M. M. McDougall, John W. Behymer, Robert A. Behymer, Sallie E. Heinz, Henry Rankins, R. F. Brown, J. H. Lockhart, Milton Holmes, H. R. Johnson, the heirs of J. J. R. Turney, Thomas Nesbit, D. W. Barkley, H. O. Brock, Thomas Mason, Cyrus Oakley, Levi Garrison, George Pepperworth, W. M. Havens, Albert Simms, C. L. Bowen, Oliver Tucker, William G. Woodford, William Walker, Catherine Steck, J. L. Harris, T. M. Rogers, W. Lockwood, J. B. Varner, E. T. Hall, H. C. Shelton, Wm. McKinney, Alex. McKinney, D. L. McCawley, G. T. Humbrison, John Watson, J. R. Bain, Nathan Renfra may be made parties defendant to this her bill of complaint, with apt and proper words to charge them, and that a subpœna in chancery be issued to each of said defendants, commanding them and each of them to be and appear before this
328 honorable court on the next rule day, then and there to answer all and singular the allegations of this her bill of complaint, but without oath, the answers of each and all of said defendants under oath being hereby expressly waived, and that at the final hearing of this cause a decree may be entered naming a day to be fixed and prescribed by this honorable court on or before which each of said purchasers and owners of said equities of redemption shall pay the several amounts so bid and paid as the purchase price of said several tracts of land at said decretal sale by the master in chancery aforesaid or be forever barred and foreclosed, or (in the alternative) that the said several tracts of land be sold under the direction and decree of this court, under such restrictions and upon such terms, as to redemption and otherwise, as the court may order and direct, and that the title to each and all of said several tracts of land may be quieted and confirmed in your oratrix, and that all of said parties defendants may be perpetually enjoined and restrained from instituting any suit or legal proceeding to assail or im-
329 pugn the validity of the said decree of foreclosure of June 25th, 1874, except by a bill to impeach the same in this court or by proper proceedings to review the same, and that said decrees severally of said circuit court of Wayne county in favor respectively of John Garrison, George Warren, Lynia J. Branson, and L. A. Skinner may be cancelled, annulled, and held for naught as clouds upon the title of your oratrix to said several tracts of land, and that the eighteen defendants first named in this prayer for relief may be restrained and enjoined from further prosecuting any

of said suits, either by themselves or their agents, servants, or attorneys, in any manner whatsoever, and that the tax title acquired by said Frank W. Tracey be set aside and annulled without conditions, and that your oratrix may be substituted for the said Elizabeth H. Taylor as to a recovery for such of the said lands of the said Elizabeth H. Taylor as were impleaded in this suit heretofore and which are now conveyed to your oratrix as aforesaid.

And for such other and further relief as may be in accordance with equity and good conscience, &c.

330 LUCINDA A. WALKER,
By HENRY C. WHITNEY, *Her Sol'r.*

HENRY C. WHITNEY,
Solicitor and of Counsel.

STATE OF ILLINOIS, } ss:
County of Cook, }

Henry C. Whitney, being first duly sworn, on oath saith that he is the solicitor for Lucinda A. Walker, the complainant in the above and foregoing bill of complaint, and that he hath read and been made acquainted with the matters and things therein set forth and alleged, and that the same are true except so much and such parts thereof as are stated on information and belief, and so much and such parts thereof this affiant believes to be true.

HENRY C. WHITNEY.

Subscribed and sworn to before me this 30th day of January, A. D. 1885.

[SEAL.] D. W. MITCHELL.

331 EX. A TO INTV. PET. OF LUCINDA A. WALKER.

Exhibit A, Referred to in Annexed Bill of Complaint.

Town. & range.	Subdivision.	Sold by county to—	Date of sale.	Present claimant.
T 1 s, r 5 e.	N e n w 8.	Isaac Garrison	Aug't 15, 1859	Henry T. Garrison.
	N w n w 8.	Richard L. Clark	Dec. 17, 1863	G. A. Bradford.
	N e s e 9.	I. R. Irwin	Aug. 17, 1864	George Warren.
	S e s e 22.	Lynia I. Branson	Oct. 10, 1863	Lynia I. Branson.
	N w s e 25.	D. H. Clevinger	Sept. 11, 1866	D. H. Clevinger.
	N e n e 35.	Patrick Galaspy	Dec. 4, 1866	Mary C. Given. Joshua Cook.
T 2 s, r 5 e.	S w n e 10.	George Keen	Oct. 15, 1866	John Keen, Sr.
	S w s e 10.	Dan'l Matthews	Sept. 21, 1866	John Dunham.
	N w s w 28.	J. D. McGill	Jan'y 31, 1866	Allen Leuce.
T 2 s, r 6 e.	S e n w 19.	James Hails	Feb'y 13, 1867	G. B. Meyers.
	N w n w 20.	Robert Barr	Nov. 13, 1867	J. B. Scudamore.
	N w n e 21.	W. L. Beeson	Apr. 16, 1867	Anderson Malone.
	N e s e 21.	R. R.	Oct. 13, 1868	
	N w s e 21.	"	"	Anderson Malone.
	S e 25.	"	"	Douglass Putnam &
	N w n e 25.	"	"	Israel Waters.
	N w 25.	"	"	"
	S w s w 30.	"	"	W. J. Kuykendall.

Ex. A—Continued.

Town. & range.	Subdivision.	Sold by county to—	Date of sale.	Present claimant.
	E ½ n e 30			W. U. Dickey.
	N e s e 35	J. B. Pendleton	Nov. 25, 1867	J. B. Pendleton.
	N w s e 35	J. B. Pendleton	Nov. 25, 1867	J. B. Pendleton.
	S w s e 35	A. J. Robinson	Nov. 27, 1867	Oliver Holmes.
	S e s w 35	A. J. Robinson	Nov. 27, 1867	Oliver Holmes.
	S w 26	R. R.		
	N e s e 10	J. R. Bain	Dec. 1, 1863	
	N w s e 19	M. M. Patterson	Jan. 14, 1861	Jno. Robinson, Wayne City.
332	N ½ n w 36	C. M. Wakefield	Aug. 16, 1864	C. M. Wakefield.
T 3 s, r 7 e	Whole 6	G. M. McDougall	Nov. 27, 1865	M. M. McDougall. John W. Behymer. Robert A. Behymer.
	S ½ s e 12	Nathan Renfra	Sept. 27, 1864	
	N ½ s e 12	Hiram Tucker	Jan'y 25, 1864	Hiram Tucker.
	N w s e 2	Fieldon Herold	Dec. 13, 1862	Sallie E. Heinz.
	N e s e 9	E. T. Hall	Feb'y 4, 1864	
T 1 s, r 8 e	N w 3	Henry Rankins	Nov. 21, 1867	Henry Rankins.
	N ½ 12	Wm. M. Robbins	Aug. 11, 1865	R. F. Brown. J. H. Lockhart.
	E ½ n e 13	Oliver Holmes	Nov. 25, 1867	Milton Holmes—w ½ s e 7, 3 s, 8.
T 3 s, r 8 e	W ½ s e 7	H. C. Shelton	Jan'y 11, 1864	
T 1 s, r 9 e	S w n e 7 N w n e 7	Thomas Nesbit	March 16, 1865	H. R. Johnson.
	N w n w 8	J. J. R. Turney	Dec. 2, 1867	Turney heirs.
	S e n e 10	R. R.	Oct. 13, 1868	
	N e s e 10	Thomas Nesbit	Nov. 3, 1865	Thos. Nesbit. D. W. Barkley.
	N w s e 10	Thomas Nesbit	Nov. 3, 1865	Thomas Nesbit. H.O.Brock, Albion.
	S w n e 12	R. R.	Oct. 13, 1868	Thomas Mason, Albion.
	S w n e 25	George W. Bailey	Nov. 28, 1867	Charles Ile, Albion.
	S w s e 13	Cyrus Oakley	Jan'y 12, 1864	Cyrus Oakley, Albion.
	N w n w 25	Wm. McKinney	Nov. 26, 1864	—— Harris. —— Thompson.
	S w n w 25	Alex. McKinney	Dec. 26, 1863	
	N w n e 25	Wm. Booth	Dec. 22, 1863	Levi Garrison. Wm. Pepperworth.
	S e n w 26	W. M. Havens	Dec. 30, 1863	W. M. Havens.
	N e n w 26	R. P. Hanna	May 10, 1859	R. P. Hanna.
	N e n e 26	James Simms	Jan'y 14, 1863	Albert Simms.
	S e n e 26	Wm. Conaway	Dec. 10, 1863	"
	S w n w 26	R. R.	Oct. 13, 1868	C. L. Bowen. Oliver Tucker. Wm. G. Woodford.
	N ½ 33	R. R.	Oct. 13, 1868	"
333	W ½ s w ¼ 33	R. R.	Oct. 13, 1868	"
	N e ¼ s e ¼ 34	Thomas St. Leger	Dec. 21, 1863	Sarah A. St. Leger.
	N ½ s w 36	William Walker	Jan. 14, 1863	Wm. Walker, Albion.
T 2 s, r 9 e	N e n w 1	John Reed	Feb. 20, 1865	Bowen. Tucker. Woodford.
	N w n w 1	Thomas Thread	Dec. 5, 1863	"
	S ½ s w 2	R. R.	Oct. 13, 1868	"
	N e s e 2	Milcine Fortner	Nov. 4, 1864	L. A. Skinner.
	S w 4	S. J. R. Wilson	Jan. 8, 1867	Turney heirs.
	N w 21	D. L. McCawley	Oct. 19, 1865	

Ex. A—Continued.

Town. & range.	Subdivision.	Sold by county to—	Date of sale.	Present claimant.
	S ½ s w 27	D. L. McCawley	Oct. 19, 1865	Catherine Steck.
	S w s e 32	D. L. McCawley	Oct. 19, 1865	J. L. Harris.
	N w s e 32	D. L. McCawley	Oct. 19, 1865	T. M. Rogers.
	E ½ s e 32	D. L. McCawley	Oct. 19, 1865	T. M. Rogers.
	Whole 12	D. L. McCawley	May 7, 1864	
T 1 n, r 8 e	S e n e 28	G. T. Humbreson	March 4, 1865	
T 1 n, r 9 e	S w n w 1	John Watson	Nov. 18, 1864	
	N e 10	R. R.	Oct. 13, 1868	W. Lockwood.
	N w s e 26	R. R.	Oct. 13, 1868	
T 2 n, r 9 e	N e s e 28	L. Lick	Jan'y 13, 1864	J. B. Varner.
T 3 s, r 7 e	S e 3	E. T. Hall	Feb'y 4, 1864	

EXHIBIT "B" TO PETITION OF LUCINDA A. WALKER.

Exhibit "B" in Suit of Walker vs. *Atteberry.*

In—
T. 1 S., R. 5 E., N. E. ¼ of N. W. ¼ sec. 8, John Garrison, D.
" N. E. ¼ of S. E. ¼ sec. 9, George Warren, D.
" S. E. ¼ of S. E. ¼ sec. 22, Lynia J. Branson, D.

334 In—
T. 1 S., R. 5 E., N. W. ¼ of S. E. ¼, sec. 25, D. H. Clevinger.
T. 2 S., R. 5 E., S. W. ¼ of S. E. ¼, sec. 10, Simeon Matthews.
" S. W. ¼ of N. E. ¼, sec. 10, John Keen, Sr.
" N. W. ¼ of S. W. ¼, sec. 28, L. L. Austin.
T. 2 S., R. 6 E., S. E. ¼ of N. W. ¼, sec. 19, George B. Meyers.
" N. W. ¼ of N. W. ¼, sec. 20, J. B. Scudamore.
T. 1 S., R. 9 E., N. W. ¼ of N. E. ¼, sec. 25, Samuel Booth.
" S. W. ¼ of N. E. ¼, sec. 25, Charles Iles.
" N. E. ¼ of S. E. ¼, sec. 34, Sarah A. St. Leger.
" N. ½ of S. W. ¼, " 36, Ann Walker.
" S. W. ¼ of S. W. ¼, " 36, Ann Walker.
T. 2 S., R. 9 E., N. E. ¼ of S. E. ¼, " 2, L. A. Skinner.
" S. W. ¼ of S. E. ¼, " 32, L. H. Harris.
T. 3 S., R. 7 E., N. ½ of S. E. ¼, " 12, Hiram Tucker.

Decrees have been taken in the following cases, viz:

T. 1 S., R. 5 E., N. E. ¼ of N. W. ¼ of sec. 8, John Garrison.
T. 1 S., R. 5 E., N. E. ¼ of S. E. ¼ of sec. 9, George Warren.
T. 1 S., R. 5 E., S. E. ¼ of S. E. ¼ of sec. 22, Lynia J. Branson.
T. 2 S., R. 9 E., N. E. ¼ of S. E. ¼ of sec. 2, L. A. Skinner.

(Intervening petition & Exhibits "A" & "B.")

(Endorsed:) Filed February 13, 1885. J. A. Jones, clerk.

335 EXHIBIT "C" to Intervening Petition of Lucinda A. Walker.

STATE OF ILLINOIS, } ss:
Wayne County, }

In the Circuit Court of said County. March Term, A. D. 1884.

J. B. SCUDAMORE } Bill to Remove Cloud from Title.
v.
H. C. WHITNEY. }

To the honorable judges of the circuit court of the county of Wayne and State of Illinois, in chancery sitting:

1. Your orator, J. B. Scudamore, brings this bill of complaint against H. C. Whitney; and thereupon your orator represents that he is the owner by title in fee and in possession of certain lands and real estate situate in said county of Wayne and State of Illinois, the same being set out and described in an abstract of title showing through whom he holds, which said abstract of title is hereto attached, marked Exhibit "A," and made a part of this bill of complaint.

336 And your orator represents further that he and those through whom he holds have been in the undisturbed possession and occupancy of said lands at all times since the fee vested in the said county of Wayne, as shown by Exhibit "A."

That he acquired title in good faith, and that he and those through whom he holds have paid all taxes assessed and levied for each year successively since the county of Wayne conveyed the same to the person named in said abstract, Exhibit A, as the grantee of said Wayne county at the date as shown in said abstract.

That no entry nor attempt to enter upon said lands has been had or made adverse to the title or possession of your orator or against those through whom he holds since the conveyance so made as shown in Exhibit A, which is made a part of this bill of complaint, as well as exhibits hereafter and herein shown to the court.

2. And your orator further represents that up to the date of the conveyance made by the county of Wayne as set out in Exhibit "A" the said premises therein described were vacant and unimproved; that possession was taken under said conveyance, and open

337 and notorious occupation continued to the commencement of this suit; that there was no title, adverse or outstanding, neither was there any valid contract, mortgage, or trust deed or other lien against the same; that there was no suit nor proceeding against your orator or against any one through whom he holds to be of notice, commenced to enforce any lien against the said lands prior to the said purchase of the county of Wayne to which they or either were made parties or privy; that your orator's title is in a direct chain within the power of the county to convey said lands without any power existing otherwise.

3. And your orator further represents, by some means unknown

fully to your orator, after the legal title was conveyed as heretofore stated, a decree was had in the circuit court of the United States, southern district of Iilinois, at the June term, 1874, in a suit entitled J. W. Kennicott *et al. vs.* The Mt. V. R. R. Co., impleading the county of Wayne.

That the decree directed and ordered the sale of your ora-
338 tor's said lands, together with other lands; that the same was offered for sale on the 18th day of September, 1877, when, no bid being made, the parties to the suit and persons therewith, combining and confederating to create and fix a cloud on the title of the lands of your orator, did aid in the same and had a deed made to N. M. Broadwell by the master in chancery, dated May 5th, 1879, and recorded in Book 38, page 297, of the Records of Deeds in the recorder's office of Wayne county; that N. M. Broadwell, by quitclaim, conveyed a portion of the said lands, including the lands of your orator, to ——, dated ——, which deed is recorded in Book —, page —, in the recorder's office of Wayne county.

4. And your orator further represents that the said defendant claims and pretends to have acquired title of some kind under the quitclaim deed and by the decree heretofore set out, relying and claiming under a certain pretended contract made and entered into by the county of Wayne, of the first part, with a certain firm doing business under the style and firm name of Vanduser, Smith
339 & Co., of the second part, to construct a railroad through said county of Wayne, which instrument bears date Nov. 19, 1858, and is recorded in the record of proceedings of the county court of that date, and is in substance and effect as follows:

"That the said firm contracted to construct a railroad through the county of Wayne by the 19th day of Nov., 1860, for which the county of Wayne agreed to pay said firm $13,500 for each three miles of grading on said road, when complete, and $6,000 per mile for each mile of iron rails laid on said road, to be paid for in the said swamp lands of Wayne county, at $5 per acre. All of said lands were to be conveyed by Wayne county to the said Vanduser, Smith & Co. when the said railroad should be completed; and in case the said Vanduser, Smith & Co. or their assigns should fail to comply with the terms of the said contract and commence and complete the same within the two years, the time therein agreed, then all the work done on said railroad was to be forfeited and the said contract was to be thenceforth null and void;" which is more
340 fully shown by Exhibit "B," here shown the court.

5. And your orator further represents the facts in the matter of the defendant's obtaining title to the said lands under the said contract to be—

A pretended contract was made as heretofore stated; that the same was pretended to be assigned on or about the 20th of April, 1859, but was not so assigned until Sept. 12, 1859, to the Mt. Vernon Railroad Company, an incorporation incorporated by an act of the Legislature of the State of Illinois, approved Feb. 15, 1855, they, the said Vandusen, Smith & Co., becoming the stockholders and directors,

owning the franchise and property of the said company of the date of the pretended assignment.

That the county of Wayne, in consideration of the terms and conditions therein set out, attempted to execute a pretended trust deed of the said lands so included in the said contract to Isaac Seymour, dated April 20, 1859. The execution of said deed pretended to be done at a special term of the county court without notice or call being made, and executed by two only of the three judges
341 without the knowledge of the third, although he lived and was within the county.

Conditioned—

"First. To secure and guarante- the construction, completing, and furnishing railroad and branches in the manner and time and upon the conditions in the act of incorporation of said company provided for the faithful application of all moneys or properties arising from the sale of said lands or obtained upon the faith of the same, as hereafter authorized, to the constructing, completing, equipping, and furnishing said road and branches, in accordance with the terms of the said act of incorporation.

Second. A portion of said bonds so conveyed to said trustees, not exceeding one-fourth part thereof in value, to be designated by said company, shall be held by said trustees, free from all incumbrances, for the purpose of sale from time to time, on the requisition of said company, for the purpose of raising funds for the payment of interest on loans in case of deficiency from other sources, and for such
342 other expenditures as the exigencies of the business of the company may require: Provided, that nor portion of said fourth part of said lands shall be sold until said road and branches shall have been actually finished.

Third. For the purpose of raising funds from time to time for the construction and completion of said road and branches and for the purchase of iron and other materials to be used thereon said company may issue its bonds, countersigned by said trustee, in sums of not less than five hundred dollars nor more than one thousand dollars each, at rates of interest not higher than seven per centum per annum, payable semi-annually; the principal of said bonds payable in the year 1874 at such place as it shall designate. The payment of said bonds shall be secured by a mortgage of the said lands, as hereinbefore provided, for which said mortgage shall be a prior lien and shall be referred and recited in said bonds so to be issued by said company—

It being understood and agreed that the said county court shall and will make, execute, and deliver to the said trustee such
343 proper deed, conveyance, declaration of trusts, or other assurances as from time to time shall be necessary and proper and as their counsel, learned in the law, shall reasonably advise for the better carrying into effect the true objects of this indenture and of securing by mortgage the payment of each and all of said construction bonds in the manner and form in said additional instrument to be fully and at large set forth and declared, with the same effect and

certainty as if the provision thereof had been embodied and set forth in this indenture."

Which deed is here shown the court, marked Ex. "C" (omitting the lands therein described).

6. That the county also attempted at the same time and manner to execute a pretended mortgage of the same date on the same lands in pursuance of the conditions in the trust deed and the contract made with Vanduser, Smith & Co., wherein it was provided that the lands should be carefully valued and appraised by the Mt. V. R. R. Co. and the county of Wayne within — months after the date of the mortgage and the value of each piece and parcel for the pur-
344 pose of division and allotment thereof into four classes, giving the number of acres of each class and valuation, and that the same should be done without delay and certified, under seal, by the said county and Mt. Vernon R. R. Co. to the trustees, setting forth at what price the same might be sold; also containing the following conditions:

"To have and to hold all and singular the lands and premises hereby granted or intended to be so, and each and every part and parcel thereof, with appurtenances, unto the said party hereto of the second part, his successors and assigns forever, as joint tenants and not as tenants in common, for the uses and purposes in this indenture set forth and declared, and subject to the provisions and requirements of the before-mentioned act of Congress of the United States and the act passed by the Legislature of the State of Illinois incorporating the said Mount Vernon Railroad Co., and subject, also, to the possession, control, and management of the party of the second part so long as said construction lands or obligations shall remain unforfeited by the proper performance of all the stipulations thereof.

345 "Provided always, and these presents are upon the express condition, that if the said Mount Vernon Railroad Company shall well and truly pay or cause to be paid to the holders of the said construction bonds or obligations, and every one of them, the principal sums of money therein mentioned according to the *time* intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinbefore mentioned, according to the true intent and meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease and determine and be utterly void."

"That the said party of the second part, having received from the said parties of the first part such said lists, schedules, allotments, valuations, and selling prices, shall and will grant, bargain, sell, and convey to all persons, bodies politic or corporate applying for the purchase of the lands and premises above mentioned making or tendering payments therefor at prices not less than the selling rates established by the said parties of the first part, and shall
346 require in payment the surrender of construction bonds or bond nearest in amount to the actual purchase-money and consideration of the conveyance and the payment of the residue of said purchase-money in cash.

But in no case shall any piece or parcel of land be sold or conveyed by the said party of the second part without the surrender and consequent discharge of said construction bonds or bond; and whenever any purchaser may tender construction bonds or bond exceeding in amount the purchase-money of the land for which application is made the party of the second part may receive the same and pay the excess (provided the same does not exceed two hundred and fifty dollars in any one case) in money to the purchaser, the interest thereof being thereby to anticipate the payment of said construction bonds or bond by the sale and conveyance of lands in manner aforesaid.

And it is further provided that if after the said construction bonds or obligations shall be fully paid, together with all arrears or interest thereon, there shall be any of the above-described lands re-
347 maining unsold or any of the proceeds and avails of the said bonds in the hands of the party of the second part unprovided for, then and in that case said party of the second part shall convey absolutely the said lands and shall pay, transfer, and deliver said receipts and avails to the said The Mt. V. R. R. Co., its successors and assigns forever.

The said party of the second part shall and will cancel and discharge each and every construction bond or obligation and the interest warrants thereon which he may receive in payment for land and as a part or the whole consideration of each deed or sale by defacing the seal of the corporation on receipt thereof, and will make or cause to be made in or upon the face thereof a note or memorandum, with proper description of the land sold or conveyed, with the date of the conveyance for which the same has been received and cancelled, in such manner and form as will enable the parties of the first part to trace and follow the appropriation of all the said construction bonds.

348 That the said party of the second part shall and will set forth and declare in each and every deed of conveyance the true amount of the purchase-money of the land or premises conveyed or intended to be conveyed thereby and the part thereof for which a bond or bonds may have been received, with the number and amount thereof, and also the sum actually paid in cash for the residue and remainder of said purchase-money, and also, whenever a bond or bonds exceeding the amount of the purchase-money may have been received in payment thereof, the amount in cash actually refunded to the purchaser of said bond or bonds for such excess."

Which copy of mortgage is here shown, marked Ex. "D" (except the land therein described).

7. And your orator further represents that at the time of the pretended assignment of the aforesaid contract and the execution of the said trust deed and mortgage the Mt. V. R. R. Co., in consideration of the fulfillment of the Vanduser, Smith & Co. contract, did execute a mortgage on all of their property covenanting to pay all tax. It recited that it mortgaged the railroad of the Mt. V. R. R.
349 Co. constructed from Ashley, Washington county, to the eastern line of Wayne county, in the State of Illinois, together

with all of its said company's real estate, lands, and tenements, hereditaments acquired or to be acquired, and also — and every privilege, franchise, and rights of said Mt. V. R. R. Co. acquired at the date of the mortgage or that it at any time thereafter may have acquired, and also all property, privileges, and franchises of the Mt. V. R. R. Co. wheresoever and whatsoever as owned by it or to be acquired, and which rights were conveyed to Isaac Seymour, trustee, on the 20th day of April, 1859, conditioned to secure the payment of the $800,000 of bonds heretofore set out at the time and manner therein specified, alleging in said mortgage that the bonds were alike secured by the pretended deed and mortgage heretofore set out, and provided further that *if* in case of default of payment of any interest as the same came due and remaining in default for six months and unpaid the whole debt, both principal and interest, should be due and payable, and that the trustee was to enter upon the said premises and take possession of all property of the Mt. V. R. R. Co. and sell the same to the highest bidder and pay
350 and discharge the said indebtedness as by the terms thereof, a copy of which mortgage is here shown and made a part of this bill, marked "E."

8. And your orator shows that the said pretended trust deed and mortgage attempted to be executed by the county of Wayne and that executed by the Mt. V. R. R. Co. are recorded in Book "B" of Mortgages, in the recorder's office of said county, on page- 297 to 358, inclusive; and that the said instruments, with the contract of Vanduser, Smith & Co., are but one transaction, and were made and executed to be *in pari materia* with the conditions therein written and agreed to by the parties, as set out in the said contract made with Vanduser, Smith & Co., and for no other consideration paid or agreed to be paid, asserting for power the 10th section of the Mt. V. R. R. Co. and the vote had of the legal voters of Wayne county Nov. 5, 1855, as shown by Ex. O & F.

9. Your orator further represents that after the execution of the aforesaid instruments an extension of the time in which the
351 railroad should be completed, as set out in the contract made by Vanduser, Smith & Co., through Wayne county was had, at the instance and request of the Mount Vernon Railroad Company and their associates in constructing said road, at the March term, 1860, of the county court of Wayne county; that the county court did extend the time for finishing the said railroad through the county to November, 1861, on the following conditions: That the said Vanduser, Smith & Co. or their assignees, the Mt. V. R. R. Co., should file a plat and survey of the location of the said railroad with the county court, also with S. J. R. Wilson, Co. judge, by the 15th day of April, 1860, and make a *bona fide* commencement of the grading in Wayne county on the said line by the 15th day of May, 1860, and keep at least fifty hands employed at said grading in Wayne county, the number of hands to be increased after six months. In case the said Vanduser, Smith & Co. — their assignees shall fail to keep said hands employed upon said line of said grading or shall fail to keep and perform any of the other conditions of this order

and everything therein contained — shall be null and void, which order is entered of record and here made an exhibit, marked "G."

352 10. And your orator further represents that — Vanduser, Smith & Co., nor the Mt. V. R. R. Co., nor their assigns constructed or built any railroad, nor was any constructed or built as proposed, nor was any grading done as was required by the contract and agreement with Wayne county, nor was any commenced, nor was any survey made locating the road, nor was there any plat filed as required with the county court as location of said road.

But your orator avers that the same was abandoned without a commencement.

That the Mt. V. R. R. Co. abandoned its organization and any attempt to construct a railroad in August, 1860.

That no division or classification was made or had as provided in paragraph 6 of the pretended deed and mortgage of Wayne county.

11. And your orator further represents and denies that the R. R. Co. negotiated any bonds for a valuable consideration; that they negotiated any bonds, or that there were any put upon the market or sold to any one, or that any iron or other material was pur-

353 chased with them, but charges that if any bonds did pass from the railroad company that they were obtained by fraud, and he charges that the bonds claimed to be in suit in the said foreclosure were in the hands of the officials of the railroad company and agents in 1860 and afterwards; that the railroad company and their assigns and privies abandoned, in August, 1860, the construction of the said railroad, and discontinued their organization and allowed their said contract to be forfeited by the county of Wayne, which was done, and all proceedings under it declared null and void by orders of county court, as by Exhibits "G" and "I," which are true copies of record.

That the said parties and priv-es holding the said bonds and coupons in controversy for said railroad company, and without any consideration paid, and with full knowledge that the railroad company had abandoned the construction of the same and had acknowledged a forfeiture of the Vanduser, Smith & Co. contract and all rights under the said trust deed and mortgage, and had suffered Isaac Seymour, trustee, to abandon his trust, and, as your orator is in-

354 formed and believes, cancelled the said deed and mortgage; that nothing being done thereunder—

That the R. R. Co. had withdrawn all bonds from him on August 5th, 1860, —, without having any other person appointed trustee, did file a complaint to commence a suit on the 7th day of March, 1865, as heretofore stated, to have a trustee appointed, and for no other purpose, as here shown by a true copy, Ex. "K," and by amendment, October 1st, 1886, to foreclose the mortgage executed by the Mt. V. R. R. Co., making the Mt. V. R. R. Co. defendant, impleading the county of Wayne, as here shown by Ex. "L," filing in said cause the mortgage executed by the Mt. V. R. R. Co. and a copy of trust deed of county of Wayne, and praying a foreclosure of mortgage of Mt. V. R. R. Co., and asking what may have been done under the said indentures attempted to be executed by the

county of Wayne, setting up for a base of power for the county of Wayne to so execute said deed and mortgage a certain deed of trust to Charles Wood, March 13th, 1856, for the use of the B. & F. R. R. Co. or any railroad company who would build a railroad through the county, which deed had been cancelled at the time by
355 reconveyance August 20, 1857, and of record, which is here shown, marked Ex. "N," and that an account may be taken of what may be due your orators upon the bonds and coupons, and that a trustee may be appointed in the place of Isaac Seymour, deceased; that the said suit was instituted by John W. Kennicott, Ebenezer Stone, Joseph E. Ward, Thos. Upton, and August Meyers, and for all parties holding like bonds.

That the said cause proceeded to an issue at the June term, 1868, of said court; that the case came on to be heard on demurrer filed by the county of Wayne, which demurrer was sustained without any further action against the county, and a decree was had against the Mt. V. R. R. Co. and all the Mt. V. R. R. Co. property decreed to be sold on the 25th day of May, 1868, to make the demands of the complainants, to wit, $73,688.49.

That the same was sold as decreed; that the defendant in the cause, The Mt. V. R. R. Co., purchased the same, which sale was confirmed and deed given on the 23d of June, 1869; that the proceedings, decree, and sale *is* more fully shown by a true copy
356 of the said record hereto attached, marked Exhibit "H;" and your orator shows that a full satisfaction of the said amount then in suit was acknowledged to have been had by the complainants thereto, and that all parties claiming to hold any bonds or coupons issued by the said railroad as a matter of law acquiesced that security on account of the said trust deed and mortgage to your orator's lands be released from any further liability for their payment in the suit then pending.

That the defendant herein and his privies had full knowledge of your orator's purchase from the county of Wayne and of the possession and occupancy of the same; that Walter B. Scates, then the principal attorney for the Mt. V. R. R. Co., as well as for the complainants, did take the decree as marked Exhibit "H" for all the holders of the obligations of the Mt. V. R. R. Co. and did put it on record by said decree that all the property of the Mt. V. R. R. Co. was released by sale thereunder from any further liability as security for their obligations.

That the Mt. V. R. R. Co. and their assigns had then abandoned all claim to the lands of your orator under the Vanduser,
357 Smith & Co. contract and the said trust deed and mortgage; that the county of Wayne was dismissed from the suit on the said demurrer filed, and your orator avers as a matter of fact that he was assured by the proceeding then and thereunder had and of record by the county of Wayne and by the power of the county to sell or mortgage said lands that the suit theretofore and then pending was for the appointment of a trustee and for the foreclosure of the mortgage of the Mt. V. R. R. Co. and to recover whatever right the Mt. V. R. R. Co. had to a lien on the lands of your orator by

virtue of the power given the county to mortgage the lands by virtue of the deed to Charles Wood, dated March 13th, 1856, and with no other base or purpose whatever; that Ex. "H," the decree taken, was the end of the suit.

12. And your orator further represents that no bonds were ever issued and put out for the construction or in aid thereof of the said railroad, but charges and avers that they were picked up as waste paper after the construction of the said railroad had been abandoned, and were held and handled around by the parties and
358 privies connected with the scheme of pretending to construct the Mt. V. R. R. without any consideration having been paid for the said bonds.

That the defendant and his privies gathered up the bonds from the directors and officers and other parties to the railroad company after taking the aforesaid decree in 1868.

That Wm. R. Hodges, of New Orleans, had become possessed of a large amount of bonds and coupons, to over $100,000, which had never been issued, but left with him by C. A. Lewis, the treasurer of the railroad company, after the abandonment of the railroad company's organization.

That the defendants and their attorney in the cause did procure of the said Hodges, by paying him a large sum of money, to wit, $1,000, after taking the decree, Exhibit "H," to put them in a suit then to be commenced, January 17, 1870, and to prorate what might be made out of the same; that the defendants knew at the time that no consideration had been paid for said bonds or coupons.

13. And your orator further represents that the Mt. V. R. R. Co. had no capital to construct a railroad except the speculative
359 value of the contract hereto set up for the lands described in the said Vanduser, Smith & Co. contract and the trust deed and mortgage, all of which was known to defendants; that the bonds had no value unless a railroad was built.

14. And your orator further represents that after the dismissal of the county of Wayne on the demurrer to the complainants' bill at the June term, 1868, of said court, and the decree had against the Mt. V. R. R. Co., and after the Mt. V. R. R. Co. had discharged all liability on account thereof, as shown by Exhibit "H," certain new parties, on the 17th day of January, 1870, filed an original bill or supplemental bill, which they called an amended bill, in the said former cause without notice of first having leave of the court, to-wit, Francis E. Parker, Wm. B. Bacon, Elmer A. Makepiece, administrator of Cyrus Wakefield; John H. Brown, Catherine Earl and Alexander Riker, executors of Morris J. Earl; Wm. P. Emerson, John J. Dixwell, J. Smith, Wm. R. Ralston, Andrew H. Ward, J. Burnett, Wm. C. Plunkett, J. L. Priest, E. W. Stone, J Sargent Smith, H. V. Davis, A. F. Gould, Wm. R. Hodges, Isaac Taylor, Ransom Geer & Co., Wed. W. Clark, McMar-
360 tin and Alexander, administrators of Peter McMartin; N. H. Streeter, Ammidown, Lane & Co., N. H. Holden, Roxana Crego, Herman Powers, Glenn & Sparrberry, J. L. Blakely, H. Fuller, Hosea Birdsall, Lucius F. Reed, Clark L. Potter, Joseph

Waxelbaum, James O. Faircloth, Caleb Underhill, James H. Hendrickson, Oliver D. Taylor, Benjamin Wise, James F. Hendrickson, E. F. Randolph, Wm. C. Potter, as complainants, and proceeded against the county of Wayne alone, leaving out the Mount Vernon Railroad Company as a defendant, and set out for the first time that they claimed authority for the Mount Vernon Railroad Company to construct a railroad through Wayne county by virtue of the assignment of the Vanduser, Smith & Co. contract, and for the first time introduced it as the power of the Mount Vernon Railroad Company to construct a railroad through said county, and of the power of the county of Wayne to mortgage its lands, as heretofore set out, and for the first time filed a copy of the pretended mortgage attempted to be executed by Wayne county, and prayed a foreclosure; that
361 the original trust deed nor mortgage were ever filed, nor was any reason assigned for their non-production; that your orator had no notice of the claims of the above-named parties, complainants, until after the order was had, as set out in paragraph 3 of this bill.

15. And your orator further represents that the complainants in said suit, after the order of dismissal was had in taking an appeal to the Supreme Court of the United States, knowingly and fraudulently, that it might appear to create *lis pendens* against your orator in his suit, March 7, 1865, did omit from the record the mortgage of the Mount Vernon Railroad Company, the decree of foreclosure, the sale, the confirmation, as here shown by Exhibit "H," and by such fraudulent device did obtain a reversal of the dismissal of the said suit, commenced January 17, 1870, and obtained the decree upon which he now claims title.

That the said decree was obtained only on the base of and by falsely and fraudulently setting up as a power and consideration and for a base that the county of Wayne might so execute the said pretended deed and mortgage under the contract with Vanduser,
362 Smith & Co., and that the same had been fulfilled.

And your orator further represents, in the bill filed Jan. 17, 1870, bonds and coupons purporting to have been issued by the Mt. V. R. R. Co. and secured by the mortgage of the said railroad company and as a security, claiming a lien on the lands under the deed of trust and mortgage executed by Wayne county, as is heretofore set out, were presented for the first time to the amount of about one million dollars, and a decree was had, as is set out heretofore, to sell the lands of your orator and other lands to satisfy the same without your orator's knowledge or he being a party to the suit, as is shown by copy of bill hereto attached, marked Ex. "M."

16. And your orator further represents, as a matter of fact and law, that the county of Wayne had no power to execute the contract with Vanduser, Smith & Co. nor to execute a mortgage to secure the payment of the bonds issued by the Mt. V. R. R. Co.; that the Mt. V. R. R. Co. had no authority, by virtue of its charter or otherwise, to construct any railroad in Wayne county nor any
363 railroad, except that set out in its charter, at designated

points, to wit, from Ashley, on the Ill. C. R. R., to Mt. Vernon, as shown by copy here shown, marked "O."

That such charter power did not reach Wayne county by eighteen miles.

17. And your orator further represents, as a matter of fact and law, that the so-called amended bill, filed January 17, 1870, setting up for the first time the assignment of the contract of Vanduser, Smith & Co. to the Mt. V. R. R. Co., with its fulfillment as the consideration and as a base of power for the county of Wayne to execute a deed and mortgage, was a new and the only base on which a recovery was or could be had, and was a new *lis pendens* by which your orator is not nor could be bound without having been made a party to the so-called amended bill of January 17, 1870.

18. And your orator avers and charges that the defendant well knew that the statements and facts herein made and charged in the premises heretofore set out were and are true, and that the au-
364 thority and power of the county of Wayne to sell or convey their said swamp lands could only be done under and by the power given by a legislative act of the State of Illinois, duly approved; and they well knew that there was no power to execute a deed and mortgage on the said lands to the use of the Mt. V. R. R. Co.; and they well knew that there was authority and power under a valid enactment by the Legislature of the State of Illinois, duly approved, by which the said conveyance by deed was made to your orator or through which he claims and by and under which all the lands had been sold, to wit, An act to dispose of the swamp and overflowed lands, approved by the Gove-nor of the State on the 22d day of June, 1852, March 4, 1854, and Feb. 16, 1857, and by an act entitled "An act for the sale of the swamp lands," approved Feb. 14, 1859, and An act to incorporate the Illinois Southeastern R'y Co., approved Feb. 25, 1867; and they well knew that all the said lands described in the said contract with Vanduser, Smith & Co. in the said pretended deed and mortgage had been so sold and conveyed under valid power, with possession open and notorious,
365 under the above said acts of the Legislature of the State before defendants commenced any proceedings for a decree or resorted to their so-called amended bill of Jan. 17, 1870, wherein they relied upon the said contract of Vanduser, Smith & Co. for the consideration and power in the matter.

19. And your orator further represents that the county of Wayne, after the failure of Vanduser, Smith & Co. or their assignees, the Mt. V. R. R. Co., failed to do anything under the contract made with Vanduser, Smith & Co. or under the extension, Exhibit "G," as set out in paragraph 9, did, at the December term, 1862, of the court, passed an order, Exhibit "I," hereto attached, and spread it upon the record of the acts of the court of that date, wherein they directed and ordered the swamp land commissioner to proceed and sell all of said lands as by the laws then in force, which was openly and notoriously done until all was sold and conveyed by deed from the county of Wayne, with such deeds placed upon record under the

authority and power conferred by the Legislature of the State
366 of Illinois, the final of all land being sold and conveyed to the Ill. S. E. R'y Co. on the 13th day of Oct., 1868, under and by the act of the Legislature of the State of Illinois approved Feb. 25, 1867.

That your orator and those under whom he holds and hundreds of other citizens of the county bought at said open sale, after the order Ex. "1" and up to Oct. 13, 1868, any of such tracts, to the amount of about 60,000 acres, as they might select, paying full value therefor until the final sale of all lands then unsold was made to the Ill. S. E. R'y Co., amounting to about 40,000 acres, who constructed their railroad on a portion of said land and through the county in 1869.

That said lawful conveyance, notorious and open possession, and occupation was had of the same long before the filing of the so-called amended bill, Jan. 17, 1870, on which defendant's recovery was had, as set out in paragraph- 14 and 15 heretofore.

20. And your orator further represents and charges that defendant well knew that no claim or base was ever set up of a right to recover the said lands to the use of the Mt. V. R. R. Co. or
367 their assignees by virtue of conditions, consideration, and power contained in the said contract made with Vanduser, Smith & Co. nor by the fulfillment thereof, nor was it intimated or suggested in any proceeding theretofore had until Jan. 17, 1870, as alleged in paragraph 14 heretofore set out; and your orator avers, as a matter of fact and law, that under no other right or power did or could have the defendant established any right, title, or lien to the said lands by any conveyance to the use of the Mt. V. R. R. Co or their assigns as security for the payment of the bonds of the Mt. V. R. R. Co., as will more fully appear by the facts here proved and by the decision of the Supreme Court in the case of Kennicott *et al. vs.* The County of Wayne *et al.*, reported in 16 Wall., page 468, through which defendants claim title.

21. And your orator further represents that the deeds of the said defendant and the mesne conveyances under the said decree are a cloud on the lands of your orator and destroys the value and sale of the same.

368 Forasmuch as your orator is without remedy in the premises, except a court of equity, and to the end that the said defendant to this bill may be required to make full and complete answer to the same, but not under oath, answer under oath being hereby expressly waived, your orator prays that summons issue to said —— ——, returnable to the first day of the next term of said court, and that upon a hearing in this cause the pretended decree in the circuit court of the United States, circuit court for the southern district of Illinois, in the case of John W. Kennicot *et al. vs.* The County of Wayne, impleaded, etc., together with the pretended sale made thereunder, and the deed to N. M. Broadwell and the conveyance by said N. M. Broadwell to —— ——, defendant herein may be set aside as a cloud upon the title of the lands of your orator and be declared null and void as against your orator, and that the said deeds may be delivered up to be cancelled, and that the title

of your orator in and to the lands described in Exhibit "A"
369 be declared clear and free from all cloud or shadow or lien created or existing by or through the said mortgage and trust deed executed by Wayne county or the aforesaid foreclosure suit or any conveyance or pretended titles arising therefrom.

And for such other and further relief in the premises as equity may require and to your honor may seem just and right.

And your orator will ever pray, etc.

EXHIBIT A.

Abstract of title to the following-described lands:

1st. The Congress of the United States duly passed an act approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for the said lands so specified and described, hereinbefore set out and particularly described in the abstract.

370 2nd. The Legislature of the State of Illinois passed an act, approved by the Gove-nor of said State on the 22d day of June, A. D. 1852, entitled "An act to dispose of the swamp and overflowed lands and pay the expenses of surveying and selecting the same," vesting the title to said lands in Wayne county.

3rd. The county of Wayne conveyed by deed in fee to Robert Barr the N. W. ¼ of N. W. ¼ of sec. 20, town. 2 S., R. 6, on the 13th day of November, 1867, recorded in Book W, p. 43, on Feb'y 13, 1868. Robert Barr conveyed same land to J. B. Scudamore by deed, August 27th, 1869, recorded in Book H, page 67.

EXHIBIT F.

Order Passed September Special Term, 1855.

Ordered, That the clerk of this court be required to advertise for a poll to be opened at the ensuing November election, that the people may vote for or against the county court of said county giving as a bonus twenty-five hundred acres of our swamp lands per mile to any responsible company that will build a railroad through
371 said county, commencing at a suitable point on the Central railroad and running east by the way of Mt. Vernon and Fairfield to the east line of Wayne county or to Mt. Carmel on the Great Wabash river.

Ordered, That the Independent Press and all other papers favorable to a railroad on said contemplated line and extending to St. Louis by requested to publish the foregoing order.

October special term, 1855.

Whereas at a meeting of the citizens of Wayne county held at the court-house, in Fairfield, on Saturday, the 6th instant, for the pur-

pose of taking into consideration the subject of our swamp lands as bonus for the building of a railroad through our county, the meeting was organized by calling E. A. Spooner to the chair and appointing Thomas Lowry secretary, when the following was adopted by the meeting without a dissenting voice, to wit:

Whereas the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed which might retard our getting a railroad in a speedy way: Therefore

372 Resolved, That the said county court be requested to order a vote "for a railroad" and "against a railroad," and if a majority of the votes in the county be cast for a road the said county court shall give our swamp lands or such part thereof as shall be necessary to secure the building of a railroad through Wayne county.

It is therefore ordered that the clerk of this court be required to advertise for a poll to be opened at the different precincts of Wayne county at the ensuing November election, that the electors may vote for a railroad and against a railroad, in pursuance of the foregoing resolution.

Copy of ballot cast.

"For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through the county of Wayne."

EXHIBIT G.

Board of supervisors. March term, A. D. 1860.

Present: S. J. R. Wilson, county judge; Thomas M. Scott and William Irwin, associates.

373 On Friday, being the fifth day of the term, it is ordered by the court that the contract with Vanduser, Smith & Co., entered into by Wayne county, of the one part, and Vanduser, Smith and Co., of the second part, on the 19th day of November, A. D. 1858, for the completion and construction of railroad through said Wayne county be so amended *so* as to give the said Vanduser, Smith & Co. or their assigns an extension of ten months in which to complete said railroad to Fairfield in addition to the time mentioned and specified in said original contract, and also an extension of eighteen months in addition to the time specified in said original contract for the completion of said railroad to the eastern line of said county, and said Wayne county hereby agrees to faithfully execute and perform all the covenants, conditions, agreements, and stipulations mentioned in said original contract to be performed by and in behalf of said Wayne county unto said Vanduser, Smith & Co. or their assigns in case said Vanduser, Smith & Co. or their assigns shall have said railroad completed to Fairfield by the 19th day of September, 1861, to the eastern line of said Wayne county by the

374 19th day of May, A. D. 1862, as fully in every respect as though said railroad had been completed to Fairfield by the

25th day of December A. D. 1859, and to the eastern line of said Wayne county by the 19th day of November, A. D. 1860, as stipulated in said original contract.

This extension is made upon this express condition: That said Vanduser, Smith & Co. or their assigns furnish to S. J. R. Wilson, county judge of said Wayne county, a plat of the located line through said Wayne county as far as Fairfield by the 15th day of April, A. D. 1860, and make a *bona fide* commencement of the grading in said Wayne county on said line by the 15th day of May, A. D. 1860, and keep at least fifty hands employed at said grading in Wayne county for the space of six months, and after the expiration of said six months from the said time of commencing said grading said Vanduser, Smith & Co. or their assigns shall have and keep employed at said grading upon said line at least one hundred hands, unless prevented by the inclemency of the weather; and in case said Vanduser, Smith & Co. or their assigns shall fail to
375 keep said hands employed upon said line at said grading as aforesaid until said grading is completed for the space of one month, unless prevented by the inclemency of the weather as aforesaid, or shall fail to keep and perform any of the other conditions of this supplement, then this order and everything herein contained shall cease and be null and void; otherwise to remain in full force and effect.

S. J. R. WILSON,
County Judge.
THOMAS M. SCOTT,
Associate Judge.
WILLIAM IRWIN,
Associate Judge.

EXHIBIT H.

MONDAY, *June 1st, A. D.* 1868.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT *et al.*
v.
THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE *et al.* } In Chancery.

Now again comes the complainants, by their solicitors, Messrs. Weldon, Hay and Cullom and Walter B. Scates, Esq., and the defendant, The Mt. V. R. R. Co., having been regularly served
376 with process herein, and having failed to enter its appearance herein or answer complainants' bill herein in accordance with the rules and practices of this court, it is therefore ordered and adjudged by the court that the default of the said defendant be, and the same is hereby, entered accordingly of record and the complainants' bill be taken *pro confesso* against the said defendant.

Whereupon, on motion of the complainant-, it is ordered that this cause be referred to the master in chancery of this court to compute

the amount due by said defendant to the said complainant- and make report thereof to this court.

THURSDAY, *June* 18*th*, *A. D.* 1868.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT *et al.*
v.
THE BOARD OF SUPERVISORS OF WAYNE COUNTY and THE MOUNT VERNON RAILROAD COMPANY. } In Chancery.

Now, on this day, comes Antrim Campbell, Esq., the master
377 in chancery of this court to whom was referred this cause to compute the amount due by the board of supervisors of Wayne county upon the lands of the Mt. V. R. R. Co., and presented his report to the court, which is approved and ordered to be filed.

JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER STONE, and JOSEPH W. WARD *et al.*
vs.
THE MOUNT VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLINOIS.

This cause came on to be heard at this term of this court, the said bill of complaint filed in this cause having been taken as confessed by said Mt. V. R. R. Co., impleaded, &c., and one of the defendants in this suit; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that it be referred to a master to inquire and state the amount due the said complainants upon the bond- and coupons set forth and described in said bill of complaint for principal and interest, and it is ordered that the said
378 defendant, The Mt. V. R. R. Co., do pay the plaintiffs what the said master shall find due for principal and interest and costs as aforesaid, to wit, the sum of sixty-three thousand *dollars* six hundred and eighty-eight $\frac{49}{100}$ dollars ($63,688.49) and the costs of this suit, within five days after the said master shall have made his report, and in default of the defendant, the said Mt. V. R. R. Co., so paying to the plaintiffs what shall be found due to them for principal and interest and costs as aforesaid by the time aforesaid it is ordered that the said premises, to wit, the railroad of the Mt. V. R. R. Co., constructed from the village of Ashley, Washington county, to the eastern boundary of Wayne county, in the State of Illinois, together with all its, said company's, real estate, lands, tenements, and hereditaments acquired and appropriated for the purpose of a right of way for a single and double track railroad, and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures, and also all and every privilege, franchise, and right of said
379 Mt. V. R. R. Co. acquired at the date of the mortgage set forth in said bill, executed by it to said Isaac Seymour, trustee, or that it at any time thereafter may have acquired, and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, sta-

tion-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of it, the said defendant, wheresoever and whatsoever now owned by it, and which said property, rights, and franchises were conveyed by said defendant to said Isaac Seymour in trust, and also all benefits and equity of redemption of the said defendants, as is fully set forth in said bill of complaint, be sold at public vendue, at the court-house door, in the city of Springfield, Illinois, by Antrim Campbell, Esq., the master of this court, to the best purchaser or purchasers that can be got for the same, to be allowed by the said master; that such sale so made by the said master shall have the same force and effect as though said sale had been duly made by the trustee named in said mortgage upon a foreclosure made by him of the same
380 under powers contained in said mortgage; that the moneys arising from such sale be paid to the solicitors of the complainants to apply upon the principal, interest, and costs reported by said master as due said plaintiffs; that upon the sale of the said above-described premises the master shall execute and deliver to the purchaser or purchasers thereof sufficient deed or deeds of sale of the same; that said master shall, before he makes sale thereof, give public notice of such sale for at least six weeks in a public newspaper printed at Springfield, Illinois.

And the court doth reserve the consideration of all further directions until after the said master shall have made his report.

And this cause is continued.

MONDAY, *September 8th, A. D.* 1868.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER W. STONE, JOSEPH W. WARD, and AUSTIN MEYERS
vs.
THE MOUNT VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY. } In Chancery.

381 Now, on this day, comes the master in chancery of this court and files his report of sale herein.

SATURDAY, *January 23rd, A. D.* 1869.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT *et al.*
v.
THE MOUNT VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLINOIS. } In Chancery.

Now, on this day, this cause came on to be heard to the exceptions filed to the report of the master herein, and the court, being advised in the premises, is of the opinion that the said exceptions be overruled.

It is further ordered that after payment of the costs and charges

of this proceeding that the residue of the purchase-money be paid to the several complainants according to their respective interests.

Ordered also that said report be confirmed and approved.

382 JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER W. STONE, *et al.*
v.
THE MOUNT VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY.

The undersigned, master of said court, respectfully makes report to the court —

That in pursuance of the decree rendered in said entitled cause, at the June term, in the year of our Lord one thousand eight hundred and sixty-eight, of said circuit court (the debt, interest, and costs due in said decree not having been paid according to the provisions thereof), he offered the property therein described for sale, at public auction, to the highest bidder for cash in hand, at the door of the court-house, in the city of Springfield, to wit, the door of the court-house of the circuit court of the United States for the southern district of Illinois, on the 26th day of August, A. D. 1868, at 12 o'clock m., having first given at least six weeks' notice in the Illinois State Register, a newspaper printed and published in the city
383 of Springfield, Ill., a certified copy of which notice, marked "A," is herewith filed, and the said defendant, The Mt. V. R. R. Co., bid the sum of six hundred dollars for said property in said decree and notices described, to wit, the railroad of the Mt. V. R. R. Co., constructed from the village of Ashley, Washington county, to the eastern boundary of Wayne county, in the State of Illinois, together with all its, said company's, real estate, lands, tenements, and hereditaments acquired and appropriated for the purpose of a right of way for single or double track railroad and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures, and also all and every the privileges, franchises, and rights of the said Mt. V. R. R. Co. acquired at the date of the mortgage set forth in said bill, executed by the said Isaac Seymour, trustee, or that at any time thereafter may have acquired, and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of the said defendant wheresoever and
384 whatsoever now owned by it.

And the said sum of six hundred dollars being the highest and best bid therefore the said premises and property were struck off to the said Mt. V. R. R. Co. at that price, and the said master made, executed, and delivered to said company a deed therefor.

All of which is respectfully submitted.

J. A. JONES, *Master.*

Costs of suit	$57 29
Advertisement	15 75
Commit.	18 00
	$91 04

EXHIBIT "1."

December Special Term, A. D. 1862.

DECEMBER 1ST, 1862.

Order to Sell Swamp Lands.

It is hereby ordered that Charles Wood, drainage commissioner, be, and he is hereby, authorized to sell the swamp and overflowed lands at private sale at two dollars per acre, on the following conditions, to wit: Any person that is now living on said swamp lands shall be entitled to file his claim and enter said lands within
385 twelve months from the date of this order, to the exclusion of all others.

Second. The person having improvements on said land shall be entitled to file his claim and enter said lands within twelve months from the date of this order, to the exclusion of all others.

And it is further ordered that any person wishing to purchase any of said lands for actual settlement or cultivation or for the benefit of timber to support their farms shall have the right to deed said land by filing their affidavit to that effect in any quantity not exceeding one hundred and sixty acres; by paying down one-third and the balance in one and two years with six per cent. per annum.

And it is further ordered that the drainage commissioner pay all the money that accrues from the sale of said swamp lands, as above stated, not otherwise appropriated, to the treasurer of the several towns in said county, according to the number of children in each township over the age of five and under the age of twenty-one years, to be used as a school fund for the support of common schools; and it is ordered that said commissioner make an annual report of his acts at the December term of this court.

386 EXHIBIT "O."

An act to incorporate the Mount Vernon Railroad Company, approved February 15th, 1855, * * * with power to construct a railroad from Mt. Vernon west to the Illinois Central railroad.

"SEC. 7. The corporation may borrow such sums of money as they deem advisable and upon such terms as they may agree for the carrying out of the objects of this act, and may provide any security therefore they think best by bond and mortgage or otherwise.

"SEC. 8. The county court of Jefferson county are hereby authorized and empowered to subscribe for such amount of the capital stock of said company as they may think proper. They may issue the bonds of the county and provide for the payment of the principal and interest thereof for sale or mortgage, one or both, of the swamp and overflowed lands of said county, and dispose of such bonds for money to pay or in payment of their subscription to said

stock, all and each to be upon such terms and in such mode
387 as they may deem best, or they may make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they deem best for the public interest of said county.

"SEC. 9. Before any disposition is made of said swamp and overflowed lands or any subscription to the stock of said company the said county court may at any regular or special term of said court order a special election to be held for the purpose of taking the sense of the qualified voters of the county thereupon, giving such notice thereof as they may deem proper, and which shall be conducted and returns made, canvassed, and published in all respects as other county elections.

"The county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in constructing of said road, which said proposition shall be printed at large as an election ticket, and the voters may express their will on said proposition by writing 'yea' and 'nay' on a separate ticket.

388 "The proposition or plan having the highest number of votes shall be adopted by the county court, provided a majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election.

"SEC. 10. Any county through which said road may run and every county through which any other railroad may run with which this road may be joined, connected, or intersected may and are hereby authorized and empowered to aid in the construction of the same or of such other road with which it may so connect, and for this purpose the provisions of the seventh, eighth, and ninth sections of this act shall extend, include, and be applicable to every such county and every such railroad."

(Endorsed:) Filed February 13, 1885. J. A. Jones, clerk.

389 And upon the same day and year last aforesaid, to wit, February 13th, A. D. 1885, came Walter B. Scates, Esq., solicitor for Fernando B. Hane, and filed his affidavit to the intervening petition heretofore filed in said cause; which said affidavit is in the words and figures following, to wit:

Affidavit to Intervening Petition of Fernando B. Hane.

United States Circuit Court, Southern District of Illinois.

STATE OF ILLINOIS, } ss:
County of Cook, }

Walter B. Scates, being first duly sworn, on oath saith that he hath heard read and been made acquainted with the matters and things set forth and alleged in a certain bill of complaint filed on the equity side of this court, wherein Fernando B. Hane is com-

plainant and John J. Blackman and others were defendants, and that the matters and things set forth and alleged therein are true, except that some of the allegations therein contained are stated on the belief of others, and as to so much and such parts thereof as are stated on information and belief this affiant believes the same to be true in substance and in fact.

WALTER B. SCATES.

390 Subscribed & sworn to before me this 7th day of February, 1885.

[SEAL.]

H. C. WHITNEY,
Notary Public, Cook Co., Ill.

(Endorsed:) Filed February 13th, 1885. J. A. Jones, clerk.

And afterwards, to wit, on the 11th day of March, in the year last aforesaid (A. D. 1885), came the defendants, by H. Tompkins, Esq., their solicitor, and filed in said clerk's office their motion for leave to file a cross-bill in said cause; which said motion is in the words and figures following, to wit:

Motion for Leave to File Cross-Bills.

In Circuit Court United States, Southern District Illinois. January Term, 1885.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.* and Consolidated Causes. } Bill to Reforeclose Mortgage.

Now comes E. T. Hall, M. Dalton, John Bain, S. J. Renfrow, Lavina Sumpter, Welcome Compton, Emily Blakely, S. Mun-
391 day, Thos. Bain, J. C. Williams, James McCleary, Geo. Gilliard, G. C. Garrard, N. N. Borah, P. R. King, and other def'ts in the above-entitled cause, by H. Tompkins, their attorney, and for leave ask that they and so many of the def'ts therein as may see fit may file their cross-bill therein by the 1st of April, 1885

H. TOMPKINS,
Att'y for Def'ts.

(Endorsed:) Filed March 11, 1885. J. A. Jones, clerk.

And on the same day and year last aforesaid (March 11th, A. D. 1885), at the January term of said court, the following proceedings were had in said court in said cause and entered of record, to wit:

Leave to Def'ts to File Cross-Bills.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 108, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

392 JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.* } In Chancery.

Now come E. T. Hall, M. Dalton, John Bain, S. J. Renfrow, Lavina Sumpter, Welcome Compton, Emily Blakely, S. Munday, Thomas Bain, J. C. Williams, James McCleary, Geo. Gilliard, G. C. Garrard, N. N. Borah, P. R. King, and other defendants in the foregoing consolidated cause, by H. Tompkins, Esq., their solicitor, and on their motion leave is granted to file a cross-bill by the 1st Monday of April next.

And afterwards, to wit, on the 13th day of March, in the year last aforesaid (A. D. 1885), came James C. Cloyd, complainant herein, by his solicitor, Walter B. Scates, Esq., and filed in said clerk's
393 office his motion for injunction in said cause; which said motion is in the words and figures following, to wit:

Motion for an Injunction.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et als.* } Gen. No. 6306, T. N. 108. In Chancery.

And now the said complainant comes, by Scates, his solicitor, and makes profert of his intervening petition filed February 13, 1885, and thereupon moves the court that an order of injunction be granted and allowed by the court restraining H. Tompkins, Robert P. Hanna, and Carroll C. Boggs, Esquires, and likewise any and all persons who are defendants in this or its consolidated suits and amended bills who claim title to lands in Wayne county, Illinois, adversely to the decree of this court of June 24, 1874, through a conveyance from Wayne county, from instituting any suit or further prosecuting any suits already commenced having for their object the annulment or impairment of the said decree; also from conveying or incumbering any of said lands or from cutting timber thereon; said

injunction order to issue without bond and to continue until
394 Hon. Walter Q. Gresham, circuit judge of this circuit, can be secured to hear for a dissolution of the injunction, which application may be made at any time.

WALTER B. SCATES,
Sol. for Motion.

(Endorsed:) Filed March 13, 1885. J. A. Jones, clerk.

And also on the same day and year last aforesaid, to wit, Friday, March 13th, A. D. 1885, at the January term of said court, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order on Comp'ts and Defendants to Close Proofs, &c.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 108, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

395 ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.* } In Chancery.

On motion of Scates, Beecher and Whitney, solicitors for all of the complainants in the above and consolidated cases, H. Tompkins, Esq., one of the solicitors for defendants, being present and consenting thereto, it is by the court ordered that the several defendants and all thereof in all of said suits shall close their proofs within thirty days from this date, and the several complainants shall close their proofs in rebuttal within twenty days thereafter, and the said cause and all suits therewith consolidated shall stand for final hearing at the ensuing June term of this court.

And also upon the same day and year last aforesaid and at the term of court last aforesaid the following further proceedings were had in said court in said cause and entered of record, to wit:

396 *Order Allowing Affidavit and Intervening Petition to be Filed.*

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 108, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.* } In Chancery.

Now comes Walter B. Scates, solicitor, and moves the court for leave to file an intervening petition for James C. Cloyd, which, upon upon due consideration thereof, is allowed.

The said Scates also moves for leave to file an affidavit to the bill heretofore filed by Fernando B. Hane, which, upon consideration thereof, is allowed.

397 And also upon the same day and year last aforesaid and at the term of court last aforesaid the following further proceedings were had in said court in said cause and entered of record, to wit:

Leave to File Amended Bills, &c.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } T. No. 108, 6306. In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR
v.
J. B. BOZARTH *et al.* } In Chancery.

The said William L. Rolston and Elizabeth H. Taylor, parties complainant in one of the suits consolidated herewith, now here severally come, by Whitney, their solicitor, and move the court for leave to file amended bills herein; and, upon consideration of said motion, the same is allowed by the court.

398 Now comes Lucinda Walker, by Whitney, solicitor, and moves the court for leave to file an intervening petition herein, which, on due consideration by the court, is granted.

And afterwards, to wit, on the 23rd day of March, in the year last aforesaid (A. D. 1885), came James C. Cloyd, John B. Cornell, and C. T. Austin, complainants herein, by E. Beecher, Esq., their solicitor, and filed in said clerk's office their replication in said cause; which said replication is in the words and figures following, to wit:

Replication of Cloyd, Cornell, and Austin.

UNITED STATES OF AMERICA:

Circuit Court of the United States for Southern District of Illinois.
January Term, 1885.

JAMES C. CLOYD
v.
CLARISSA JORDAN *et al.* } Bill in Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } Do.

399 C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } Do.

The replication of said complainants, James C. Cloyd, John B. Cornell, and C. T. Austin, all of said cases having been consolidated.

The said complainants, saving and reserving to themselves all and all manner of advantage of exception which may be taken to the manifold errors, uncertainties, and insufficiencies of said answers of said defendants, for replication say that they doth and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; all of which repliants are ready to prove, &c.

E. BEECHER,
Sol. for Compl'ts.

(Endorsed:) Filed March 23, 1885. J. A. Jones, clerk.

And afterwards, to wit, on the 8th day of April, in the year
400 last aforesaid (1885), came the defendants, by their solicitor, and filed in said clerk's office their affidavits on motion to dissolve injunction in said cause; which said affidavits are in the words and figures following, to wit:

Affidavits on Motion to Dissolve Injunction.

In United States Circuit Court for the Southern District of Illinois.
January Term, 1885.

ELIZABETH TAYLOR *et al.*
v.
J. B. BOZARTH *et al.* and Cases Consolidated with the Same. } In Chancery.

Before me, at my office, in Wayne county, Illinois, as a witness for defendants, came W. T. Faulkner, who, being first duly sworn, on oath says:

My name is W. T. Faulkner; age, 37 years; residence, Wayne county, Illinois; occupation, farmer.

Some time in the spring of 1881, I think, I had a conversation with H. C. Whitney, who owned some swamp lands under the bondholders' title, and was attorney for some other parties, but I do not remember who they were.

401 I was on my way to Centralia and Whitney was on his way home from Fairfield to Chicago, and we were on the same train. We got to talking about the lands, and he asked me if I could not help him sell some of them; said he would sell them very low; I don't remember the price, but it was less than one dollar per acre. He gave me a list of the lands represented and owned by him; said he would give me ten dollars for each 40 acres I could sell for him. I was to go to the men who held under title from the county and sell to them first if I could, and if I could not sell to them I was to sell to any one I could. He was anxious to dispose of the lands and get rid of them. I only talked to three of the owners of the lands under title from the county, and I found them so opposed to entertaining any proposition from the owners of the bondholders' title that I went no further in the matter.

W. T. FAULKNER.

Subscribed and sworn to before me this 6th day of April, A. D. 1885.

A. R. ROBINSON, *J. P.*

402 Also before me, at the same time and place, came J. B. Scudamore, who, being first duly sworn, on oath states: My name is J. B. Scudmore; age, 52 years; residence, Wayne City, Wayne county, Illinois; occupation, farmer. Some time in 1882, as well as I remember, I got a postal card from H. C. Whitney, saying he would give me a quitclaim deed to *a* 40 acres of my land for ten dollars, and said if any of my neighbors who had lands he was interested in would pay the same he would make them deeds, and that I should tell them of his proposition. I afterward saw him at Fairfield, and we then had a talk about the proposition he had made, and he said they had offered to sell the lands for the same

price it would cost as attorney fee to have their title set aside. I understood that the title he owned and represented was the title under decree of foreclosure in the U. S. court. I gave the postal card to Col. Tompkins, my attorney, and if he returned it I have lost it, for I can't find it. I am satisfied the postal card was in Whitney's writing, for I have had other letters from him.

403 The time I talked with Whitney at Fairfield he was there at court defending suits commenced against him and others by Col. Tompkins as attorney for citizens claiming title from the county to set aside and remove their title as a cloud upon the title of the citizens.

J. B. SCUDAMORE.

Sworn to and subscribed before me this 6th day of April, A. D. 1885.

J. R. ROBINSON, *J. P.*

(Endorsed :) Filed April 8, 1885. J. A. Jones, clerk.

And on, to wit, the day last aforesaid (April 8th, 1885), came the defendants, by their solicitors, and filed in said clerk's office their further answer to the intervening petitions of J. C. Cloyd, Lucinda A. Walker, and Fernando B. Hane; which said answers are in the words and figures following, to wit:

404 *Answer to Intervening Petitions of Cloyd, Walker, and Hane.*

In Circuit Court United States, Southern District Illinois. January Term, A. D. 1885.

ELIZABETH H. TAYLOR *vs.* J. B. BOZARTH *et al.* and Consolidated Cases. } Bill for Relief and for Reforeclosure.

Answer of respondents.

The further answer of defendants to the intervening petition of J. C. Cloyd, Lucinda A. Walker, and Fernando B. Hane, praying an injunction, reserving to themselves all rights of exceptions to the complaints and intervening petitions for error, uncertainty, and imperfection.

Now come H. Tompkins and R. P. Hanna, two of the defendants, for themselves and as attorneys for J. B. Bozarth, H. Tucker, Geo. B. Meyers, M. Dalton, John Bain, L. J. Rider, E. T. Hall, A.

405 Winters, S. J. Renfrow, Sarah A. St. Ledger, Elizabeth Smock, Levina Sumpter, Welcome Compton, J. W. Atkinson, S. Munday, H. T. Garrison, S. M. Garrison, Thomas Bane, J. and A. Austerman, J. C. Williams, James Melary, Andrew Martin, G. C. Garratt, N. N. Borah, P. R. King, and all parties having been served with summons and not represented by other attorneys, and for answer deny that the said Lucinda A. Walker, Fernando B. Hane, and J. C.

Cloyd, and including all other complainants, or either of them, have title and are owners in fee of the said described lands as set out in their intervening petition, and reference is here made to the original answer hereto filed.

Your respondents, further answering, show that Fernando B. Hane was not a party nor a purchaser under the decree and sale had in this court June, 1874, and that he acquired his title, if any, by quitclaim deed since the commencement of this suit from Walter B. Scates, a citizen of this State and said to be his brother-in-law.

And your respondents, from information and belief, aver that the same was so conveyed without consideration and for the sole purpose that the title so held by said Scates could not be brought in question in the State courts without great expense to your respondents, and that he, the said Scates, might bring this proceeding in this court; that said Fernando B. Hane is reported as of no property and insolvent.

That the same facts exist as to Lucinda A. Walker acquiring her title. Your respondents deny that she was a party or purchaser under the decree and sale of this court, and show that she acquired title, if any, from H. C. Whitney, the attorney in this case,
406 he being her father and residing in Chicago, Ill., and she being only married and without property the last of October, 1884, and if non-resident and possessed of property she became so since that time and the date of the conveyance to her Nov. 26th, 1884.

That said H. C. Whitney was an attorney in the original suit in this court of Kennicott *et al. vs.* The County of Wayne *et al.* and acquired by some means all the claim of Cyrus Wakefield therein, being about one-seventh of the entire amount.

That the said Whitney was and is a resident of the State of Illinois; that the pretended sale and transfer was by quitclaim deed, recorded on the 4th of Dec., 1884, long after this suit was commenced and the suits in the State court at issue against the said Whitney, and, as your respondents are informed and believe, was made for the sole and only purpose that he should not be amenable to the courts of this State, and that he might, as the attorney for the said Lucinda A. Walker, his daughter, defeat the State court of its jurisdiction and bring the proceeding to this court.

That the same facts exist as to J. C. Cloyd acquiring his title. They deny that he was a party or purchaser under the sale and decree of this court, and show that he acquired title, if any, as the attorney of one J. C. Cornell, who acquired his title from the public administrator January 24, 1880, under and by a sale of a pretended interest claimed to exist in favor of Wm. H. Hodges, deceased, wherein Walter B. Scates was the purchaser at said sale.

That the said J. C. Cloyd also acquired a part of his title
407 to tracts in suits pending in State courts—Exhibit B—from said Walter B. Scates since this suit was commenced, to wit, February 5th, 1885, and as a matter of law your respondents aver that these petitioners have no standing in this court.

And your respondents, further answering, deny that any of the

complainants herein were purchasers at the sale under the decree of this court in case of Kennecott *et al. vs.* Wayne County, as alleged in complainants' bill, or that any of the parties to the decree or purchasers at the said sale sought or pretended to acquire the possession of the said lands from these defendants, but aver that they abandoned their claim of title by quitclaim for a nominal sum to these attorneys, H. C. Whitney, W. B. Scates, and others, without consideration, as soon as they learned the lands were held by respondents under an adverse title.

That by the said decree, June, 1874, in the said Kennecott suit the order was that only those "who had purchased of the county *pendente lite* since the commencement of this suit were to surrender the possession." The rights of all parties purchasing from the county were reserved and protected, as respondents show, for further issue and determination as might appear just.

And your respondents further aver and charge in answering complainants' petition that, instead of seeking to enforce their said decree in the said Kennicott suit of foreclosure, the said H. C. Whitney, Walter B. Scates, and J. C. Cloyd, by themselves or through Edwin Beecher, their agent and attorney, have by unprofessional acts made threats of prosecution to dispossess respondents for the last ten years past without instituting any proceedings to test their title, offering

408 to sell their claim for what it would cost respondents for their attorney fee to defend, saying that those who would come up and pay the price of the attorney fee to defend they would quitclaim, but to those who refused their claim they would show no mercy; that this disturbing of the question of title has been going on for more than ten years, creating an unsettled feeling to the title of the lands of one-seventh of the entire county, engendering bad feeling, distrust of their rights, destroying the ordinary use and improvement of the same, breaking down their value that they and their agents and attorneys may buy up the said lands at tax sales at a nominal value or at less than their value. A partial list is here shown the court, being managed by the said Edwin Beecher, they being part of the lands sought to be reforeclosed.

And your respondent, H. Tompkins, answering for himself to the charges in said petition made, states that he is an attorney-at-law, and as such was employed as early as 1874, and was paid a fee of $150 and other cash payments, without any solicitation on his part, to look into the situation of the parties now defendants and determine how the suit, decree, and sale would affect their rights in the premises. He denies that he ever solicited a solitary person to institut suit, as charged in complainants' bill, but avers that his employment was made and had through a committee of the defendants interested.

And he denies that he or his clients have done any act to degrade or bring in contempt the jurisdiction or decree of this court, and he shows as facts existing in this case to be as follows:

That the suit of foreclosure entitled J. W. Kennicott *et al. vs.*

409 The County of Wayne was determined in this court in 1874, first, against the Mt. V. R. R. Co., impleading the county of Wayne, and afterward the county of Wayne alone.

That the base for recovery and on which the recovery was had was only set up and relied upon, to wit, the contract with Vanduzer, Smith & Co., by an amended bill filed January 17th, 1870, two years after the county had sold all land to defendants and others, as set out in paragraph in the answer to the original bill herein.

That the defendants were in no way bound by the decree or the proceedings therein had, which facts are more fully set out in the original answer herein filed.

He admits that he has brought a large number of suits to quiet title and obtained decrees cancelling the complainants' title as set up by complainants by a decree and decision of the supreme court of Illinois.

And your respondents, further answering, aver that, as counsel, on an examination he found the facts existing as set out in respondents' answer filed herein to the original bill and in the respondents' original bill as filed in the circuit court of Wayne county, a copy of which is filed herein by these complainants; all of which charges and facts he proved to be true.

That the court found and decreed on such issue and proof—

That the instruments called a mortgage and deed purporting to have been executed by Wayne county was not the act or deed of Wayne county.

That it was executed by S. J. R. Wilson and T. M. Scott, two of the judges, out of any term of the court and without call for special term or notice to the other judge.

410 That the consideration promised for its execution was a total failure, to wit, the fulfilling of the contract with Vanduser, Smith & Co.

That the county had no power to execute a deed and mortgage to aid the Mt. V. R. R. Co.

That the Mt. V. R. R. Co. had no power to build a road in Wayne county or to receive or enforce aid therefor.

That the county had cancelled and annulled the contract of Vanduser, Smith & Co. to construct a road in Wayne county, it being the consideration for the pretended deed and mortgage, and by order of the court directed at the December term, 1862, the lands to be sold to any one who desired to purchase.

That defendants herein, with hundreds of others, did so purchase the lands in fee under a legal power to convey until all were sold, the last on the 13th of October, 1868.

That a large number of such cases were put at issue in October, 1879, and running through each of two terms per year thereafter in all ten terms of court.

That Walter B. Scates, H. C. Whitney, and Elizabeth H. Taylor, now appearing in this case, were defendants to the greater number of suits.

That they entered their appearance voluntarily for themselves and many others, without the issue of summons, after the first term of urt.

That the cases were fully contested on the aforesaid issue, first by

demurrer, then by plea, then by answer, and then by full proof, with argument of counsel.

That on the hearing the court found as above stated.

That an appeal was then taken in the case of King *vs.*
411 Scates, one of the cases so pending, to the supreme court of Illinois from the Wayne circuit court, at the October term, 1881.

That after a hearing in said court the above facts, as herein stated, were found to be true, and the said decree of the court was affirmed, which finding and decision is reported in vol. 110, Ill. Reports, page 456, which is here shown the court, and made a part of this answer and as a true statement of the facts existing and proved.

Your respondents, further answering, state at the time of the said appeal from the October term, 1881, there were a large number of cases pending on the docket, with issue made up and evidence taken therein, which by agreement were held in abeyance until the result of the above case of King *vs.* Scates, on appeal, should be determined, and which are there now pending and stayed only by this temporary order of injunction, the court convening three days after the obtaining of this restraining order, to wit, 16th of March.

That the said causes were instituted by the defendants herein against the said Walter B. Scates, H. C. Whitney, Elizabeth H. Taylor, J. C. Cloyd, as stated in the intervening petition, and were so pending at the time *of* the pretended transfer of title was made to F. B. Hane, Lucinda A. Walker, and J. C. Cloyd, all of which was fully and well known by the petitioners herein praying for the extraordinary proceedings.

And your respondents, further answering, as a matter of law, aver that the said State courts had full jurisdiction of the subject-
412 matter and of the parties; that the proceedings therein are *res judicata* against any equity or right of these complainants; that these petitioners' grantors had fully submitted voluntarily to the said State courts and the jurisdiction thereof for the last ten years and the proceedings therein had; that by laches on their part and submission thereto they would be bound by the act of their grantors and likewise by statute of Limitations of any equity or rights in the premises.

And your respondent, further answering, denies that he is committing waste on any of the said lands. He avers that he has been in undisturbed possession of large tracts for divers of his clients for the eight years last past; that the same were occupied prior to that time by divers parties and persons acquiring their title from the county of Wayne after a declaration of forfeiture had been had, as shown by Exhibits "G" and "I" in the answer herein filed to the original bill; that the parties had so been in uninterrupted possession from the date of purchase; that the lands were so assessed to them.

That they and successive grantees have paid all taxes each and every year.

That the amount of lands so under his direct charge as attorney and agent would exceed 30,000 acres, on which they have paid

tax to exceed $60,000, with an additional sum of over $100,000 for other clients who are directly by themselves in possession.

That the lands described in complainants' petition of the first class would include only a few hundred acres; that they are located so that they are interwoven with and often under one improvement with other lands, and that several of said tracts have been conveyed by the said W. C. Wheeler by quitclaim deed to your respondents' client of the first class before he conveyed them to his daughter, Lucinda A. Walker.

413 That he is in possession and occupation of the lands as attorney and agent for the parties, with divers tenants residing thereon; that his clients hold title from the county through a direct power to so convey the land, dating back now for sixteen years.

That the parties for whom he is attorney and agent are able and responsible men financially, owning over 10,000 acres within the county, of undisputed title.

And, further, he denies that he is insolvent, but avers to the contrary that he is solvent and able to meet all demands against him in this matter.

Your respondent, further answering, avers that great and irreparable injury, hardship, and expense will result to these respondents by these proceedings on the part of the complainants if permitted to remain standing.

That a cloud of title is thrown upon these respondents' title and possession, hindering and delaying the proper improvement and use of the said lands without any adequate remedy.

That the said complainants are non-residents and all of them insolvent except J. C. Cloyd.

That the damage to your respondents would amount in the aggregate to many thousand dollars more than the parties jointly are worth.

That no sufficient bond, but an inadequate one and only for costs, has been given.

That, as shown by complainants' charges and respondents'

414 answer, several hundred persons and parties are occupying these lands under a deed from the county of Wayne adverse to the so-called deed and mortgage under which complainants assert title and have so occupied for a period of twenty-five years, and none of them for less than sixteen years, without being parties or privies defendants to any proceeding against them.

And these respondents, further answering, deny that the complainants are entitled to any relief or any part thereof in the said bill of complaint demanded, and pray*s* the same advantage of this answer as if they had pleaded or demurred to the said intervening petitions, and pray*s* to be dismissed with *his* reasonable costs and damages in this behalf.

H. TOMPKINS,
R. P. HANNA,
Att'ys per se and for Respondents.

(Endorsed:) Filed April 8th, 1885. J. A. Jones, clerk.

415 And afterwards, to wit, on Saturday, the 11th day of April, in the year last aforesaid (A. D. 1885), at the January term of said court, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Dissolving Injunction & Restraining Order.

JAMES C. CLOYD *v.* CLARISSA JORDAN *et al.*	T. No. 108, 6306. In Chancery.
C. T. AUSTIN *v.* MICHAEL BOOK *et al.*	In Chancery.
JOHN B. CORNELL *v.* THOMAS J. PETTYJOHN *et al.*	In Chancery.
ELIZABETH H. TAYLOR *v.* J. B. BOZARTH *et al.*	In Chancery.

The above causes coming on to be heard before Hon. Walter Q. Gresham, circuit judge, upon the motiôn therein filed by solicitors for defendants to dissolve the injunction and restraining order heretofore granted by Hon. S. H. Treat, judge of the district
416 court of the United States for the said district, after hearing argument and being fully advised in the premises the court doth order, adjudge, and decree that said injunction and restraining order so granted as aforesaid in said cause above named and all other causes, whether made by original amended bills or intervening petitions, consolidated with said cause be, and the same is hereby, dissolved, set aside, and held for naught.

And also on the same day and year last aforesaid, April 11, 1885, came the defendants, by their solicitors, and filed in said clerk's office their suggestion of damages on the dissolution of injunction in said cause; which said suggestion, &c., is in the words and figures following, to wit:

Suggestion of Damages, &c.

In Circuit Court United States, Southern District Illinois. January Term, 1885.

In chambers, before Hon. Walter Q. Gresham.

417 ELIZABETH H. TAYLOR *et al.* *v.* J. B. BOZARTH *et al.* and Consolidated Cases.	Bill to Reforeclose Mortgage and Injunction.

On motion, this the 10th day of April, 1885, comes R. S. Tuthill, att'y, and H. Tompkins, *per se* and att'y for respondents, to dissolve

the temporary injunction granted in the above-entitled cause on the 15th day of March, 1885, and the same, after answer, with affidavits and argument of counsel, having been dissolved, respondents, by their att'ys and for themselves, having been enjoined and on the dissolution of the same, suggest damages, and they may be assessed to be, and for a decree and judgment to be, recovered of the above complainants as follows:

For att'y fees	$1,000
To damage of delay in prosecuting said suits so enjoined	500
For expenses in this behalf of evidence, printing and travelling expenses	500

And ask that evidence may be had in matter, and that the same may be decreed with execution against complainants before
418 the final disposing of the said causes.

R. S. TUTHILL,
Att'y for Resp'ts,
With H. TOMPKINS,
Sol. for Respondents.

(Endorsed:) Filed April 11, 1885. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 8th day of June, in the year last aforesaid (A. D. 1885), at the June term of said court, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Setting Cause for Hearing.

JAMES C. CLOYD *v.* CLARISSA JORDAN *et al.*	T. No. 105, 6306. In Chancery.
C. T. AUSTIN *v.* MICHAEL BOOK *et al.*	In Chancery.
JOHN B. CORNELL *v.* THOMAS H. PETTYJOHN *et al.*	In Chancery.
ELIZABETH H. TAYLOR *v.* J. B. BOZARTH *et al.*	In Chancery.

[On the margin:] (Consolidated.)

419 By consent of parties, by their solicitors, this cause is set for hearing on the 29th day of June inst. before a full bench.

And afterwards, to wit, on the 3rd day of October, in the year last aforesaid (1885), came the defendants, by their solicitors, and

filed in said clerk's office their motion to dismiss in said cause; which said motion to dismiss is in the words and figures following, to wit:

Motion of Defendants to Dismiss as to Certain Parties.

STATE OF ILLINOIS, *Southern Dist., U. S. Court,* } ss:

In Circuit Court United States, Southern District of Illinois. June Term, 1885.

ELIZABETH H. TAYLOR *et al.* *v.* J. B. BOZARTH *et al.* } Bill to Reforeclose Mortgage.

Now come the respondents, by their attorneys, James McCartney, R. P. Hanna, and H. Tompkins, — files this their motion to dismiss the suit as to all parties claiming or holding title conveyed
420 to them since the commencement of this suit, to wit, Jan., 1882, by Walter B. Scates and H. C. Whitney, and for cause state that H. C. Whitney and Walter B. Scates are and were residents of the State, and that the transfer of the said title was made alone and for the purpose that the said parties, to wit, Lucinda Walker, Fernando B. Hane, and J. C. Cloyd, who claim to — non-residents and who now are the real complainants in this cause, received their title from the said H. C. Whitney and Walter B. Scates, it being a quitclaim interest only and without any consideration paid, that they might intervene in this suit and thus deprive the State court of its jurisdiction over the subject-matter of the said lands.

And your respondents further state that the same was so transferred after the supreme court of the State of Illinois had decided that the said title to the said lands so held by the said H. C. Whitney and Walter B. Scates was null and void, in which said causes so heard and adjudicated by the supreme court of the State
421 of Illinois the said H. C. Whitney and Walter B. Scates were parties defendants thereto.

Whereupon your respondents move that this cause be dismissed.

HANNA & ADAMS,
H. TOMPKINS,
JAMES McCARTNEY,
Att'y- Def'ts.

STATE OF ILLINOIS, *Sangamon County,* } ss:

H. Tompkins, being duly sworn, states that the facts stated in the above motion on information and belief are true.

H. TOMPKINS.

Subscribed & sworn to before me October 3, 1885.

J. A. JONES, *Clerk.*

(Endorsed:) Filed October 3, 1885. J. A. Jones, clerk.

422 *Complainants' Evidence.*

UNITED STATES OF AMERICA, } *ss:*
Southern District of Illinois, }

Circuit Court of the United States within and for the Southern District of Illinois.

JAMES C. CLOYD
v
CLARRISSA JORDAN *et al.* and Cases Consolidated Therewith. } In Chancery. Bill for Relief.

To H. Tompkins, R. P. Hanna, J. A. Creighton, C. C. Boggs, G. J. George, and James McCartney, solicitors for defendants:

Take notice that on Friday, Dec. 12th, 1884, and continuing from day to day if necessary, at the office of the clerk of the circuit court for Jefferson county, Illinois, at Mount Vernon, we will proceed to take the depositions *de bene esse* of the following-named witnesses, viz., R. L. Boggs, Angus M. Grant, Francis Sursa, W. Duff. Green, and Walter B. Scates, under the provisions of the act of Congress, and you are hereby invited to attend and cross-examine said witnesses if you choose to do so.

423

WALTER B. SCATES,
EDWIN BEECHER,
HENRY C. WHITNEY,
Solicitors for Complainants.

STATE OF ILLINOIS, } *ss:*
Wayne County, }

Henry C. Whitney, being first duly sworn, on oath saith that affiant mailed in the P. O. at Fairfield, Illinois, a copy of the above notice, postage paid, directed to James McCartney, Springfield, Illinois, and also mailed in the P. O. at Fairfield, Illinois, a copy of the above notice, postage paid, directed to J. A. Creighton, Springfield, Illinois, both on December 7th, 1884, and that on December 8th, 1884, affiant left a copy of the same at the office of R. P. Hanna, and also one in the office of C. C. Boggs, at Fairfield, Illinois, copies of the above and foregoing notice, and that on December 8th, 1884, affiant left a copy of said notice at the office of said H. Tompkins, in Fairfield, Illinois.

HENRY C. WHITNEY.

Subscribed and sworn to before me this 8th day of December, A. D. 1884.

R. E. MABRY, *Clerk.*

Received copy Dec. 8, '84.

G. J. GEORGE.

424 *Stipulation.*

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States, Southern District of Illinois.

ELIZABETH H. TAYLOR *et al.*
v.
J. B. BOZARTH *et al.*
} Bill for Relief and Reforeclosure.

It is hereby stipulated that the contract between Vanduser, Smith & Co. and the county of Wayne for the building of the railroad east and west through the county may be read in evidence as the same appears in the printed record of the foreclosure case of Kennicott *et al. vs.* The Board of Supervisors of Wayne County without proof of execution.

Fairfield, Ills., Dec. 9, A. D. 1884.

W. B. SCATES,
EDWIN BEECHER,
Att'ys for Complainants.
H. TOMPKINS,
R. P. HANNA,
Att'y- for Def'ts.

The deposition- of Angus M. Grant and Francis M. Sursa and Dr. W. Duff. Green, of the county of Jefferson and State of Illinois, witnesses of lawful age produced, sworn, and examined on their
425 corporal oath on the twelfth day of December, A. D. 1884, and at other days and times, and at Mr. Grant's house, at the office of the clerk of the circuit court, in the city of Mt. Vernon, in the county of Jefferson and State of Illinois, by me, John S. Bogan, special master and a clerk of the circuit court within and for said Jefferson county, State of Illinois, in pursuance of the order and notice in the cases in decretal order mentioned and hereto annexed for the examination of the said witnesses, to be read in evidence in behalf of the complainants on the trial of a certain suit now pending and undetermined in the United States circuit court of the southern district of Illinois, wherein James C. Cloyd and others were complainants and Clarissa Jordan and others were defendants.

The said Angus M. Grant and Francis M. Sursa, being first by me duly sworn according to law, previous to the commencement of their examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the complainants as of the defend-
ants, in relation to the matters in controversy between
426 the said parties so far as they should be interrogated thereto, on oath testified as follows, Judge Walter B. Scates appearing for the complainants; no one for the defendants:

Testimony of Angus M. Grant.

ANGUS M. GRANT, being present, was cautioned and duly sworn according to law, and testified as follows, to wit:

Interrogatory 1st. What is your name, age, and residence and occupation?

Answer. Angus M. Grant; Mt. Vernon, Illinois; age, 75 years since May last. I have resided in Mt. Vernon over 48 years, and have retired from business.

Int. 2nd. State what relation, if any, you had with the Mt. Vernon Railroad Company from the year 1858 to the year 1861.

Answer. I was secretary part of the time, from 1859 until the spring of 1860, and a director of the board during the same time, and kept the minutes of the board at Mt. Vernon during that time, and minutes of the board were kept in New York city by other secretaries, as I learned and believed. I was at the door where
427 the meeting was held, but did not participate in it. I had other business at that time.

Int. 3rd. Look upon the letters now shown you and annexed to your deposition as exhibits as follows, to wit:

No. 1. S. B. Kendrick, dated August 3rd, 1860.
No. 2. From same, dated Dec. 22nd, 1860.
No. 3. From same, dated March 16th, 1861.
No. 4. From same, dated August 1st, 1860—
and each addressed to S. J. R. Wilson.
No. 5. From J. T. Van Duzer, dated May 14, 1861.
No. 6. From same, dated May 22d, 1861.
No. 5 is addressed to Dear Judge.
No. 6 is addressed to Friend Wilson.
No. 7. From Ira Hersey, dated July 26, 1860.
No. 8. From same, dated Sept. 3d, 1860.
No. 9. From same, dated August 10, 1860.
No. 7 & No. 8 addressed to S. J. R. Wilson, and No. 9 to Judge Wilson.
No. 10. From C. W. Lewis, without a date, addressed to My Dear Judge and Judge Wilson.
No. 11. From S. J. R. Wilson, dated August 27, 1860, addressed to Mr. Chas. W. Lewis.
No. 12. From James Morris, dated October 23rd, 1860, addressed to Charles Lewis, Esquire, treas. Mt. V. R. R. Co.—

428 And state if you are acquainted with the signatures and handwriting of the several writers whose signatures appear signed thereto severally; and, if so, state if the signatures thereto severally are respectively in the handwriting of several parties whose names are subscribed thereto severally.

Obj. to.

Answer. I have examined them and I know the handwriting of the parties which are severally signed to said above-described letters, and as numbered from 1 to No. 12, inclusive.

Interrog. 4. Look upon the contracts and agreements and the engineer's report now shown you as follows, to wit:

Agreement between H. Jameson, David Newcum, J. G. Elliott, Austin Meyers, and L. D. Crippin, dated January 26, 1860, for the purchase and delivery of railroad iron for the Mount Vernon railroad, marked No. 1.

Obj. to.

No. 2. Contract made on the 12th of September, 1859, of assignment of Van Duzer, Smith & Co. of company's contract with Wayne county for building a railroad through said county, made in 1858, to the Mount Vernon Railroad Company, and marked No. 2.

Obj. to.

429 No. 3. Contract dated 20th of April, 1859, between the Mount Vernon Railroad Company and the county of Wayne and Ira Hersey for the deposit and custody of four hundred thousand dollars of the construction bonds of the Mt. Vernon Railroad Company for the use and benefit of Wayne county, the proceeds thereof to be applied to the construction of said railroad through said Wayne county, with Ira Hersey as custodian of said construction bonds, and marked No. 3.

Obj. to.

No. 4. The report of L. J. Germain, chief engineer of the Mount Vernon Railroad Company, made on the 2nd day of May, 1859, of a survey of a line of railroad from Ashley, on the Illinois Central railroad, through Jefferson county and Wayne county to the eastern boundary thereof, together with an estimate of the cost of construction thereof and a plat of the said survey, each marked as No. 4.

Obj. to.

No. 5. Order of B. Cazey, president, to N. A. Smith, treasurer of Mt. Vernon Railroad Company, dated June 15, 1859, to deliver to Ira Hersey four hundred thousand dollars of the Mt. Vernon railroad construction bonds under the said deposit contract, marked No. 5.

Obj. to.

430 No. 6. Ira Hersey's receipt for the above bonds, dated June 20, 1859, marked No. 6.

Obj. to.

No. 7. Receipt of S. J. R. Wilson to Charles W. Lewis, treasurer of the Mt. Vernon Railroad Company, for the above bonds and dated June 18, 1860.

Obj. to.

No. 8. Receipt of Charles W. Lewis to S. J. R. Wilson for the same bonds, dated June 18, 1860, marked No. 8.

Obj. to.

Now, say all of which contracts, &c., above described and numbered from 1 to 8, inclusive, are attached *to* as exhibits to the deposition of A. M. Grant, taken at Mt. Vernon, Illinois, on the third day of November, A. D. 1870, before John W. Baugh, notary public, and on file in the case of John W. Kennicott *et al.* against The Board of Supervisors of Wayne County *et al.*, in the circuit court of the United States for the southern district of Illinois, and state if you are acquainted with the handwriting and signatures of the several parties whose signatures appear to the several writings above enumerated, from 1 to 8, inclusive; and, if so, state if the several signatures to the said instruments are genuine and in the handwriting of the said several parties as attached to said several writings.

Obj. to.

431 Answer. I have examined them. I am acquainted with the handwriting of the several parties who signed said instruments, and believe them to be their several genuine signatures as attached thereto.

Int. 5. Please state if you were present and know of the negotiation and sale by the Mount Vernon Railroad Company of any of its construction bonds to James Morris, of Dalton, Georgia, for bank currency and the delivery of the bonds and currency, mutually; and, if so, state when it was, where it was, and who were present and knowing to the transaction, and also if S. J. R. Wilson was then a director of the Mount Vernon Railroad Company and was present and participating in the making of said negotiations. Please state in detail all you may know in regard to that transaction as fully and particularly as you may now recollect.

Obj. to.

Answer. I was present when there was a negotiation between the parties which took place at the St. Nicholas Hotel, in the
432 city of New York, but the exact time I do not recollect, but think it was early in the year 1860, the object of the meeting being to obtain money to pay the first installment for railroad-iron contract. There were present Messrs. Crippin, Kendrick, Wilson, Smith, Hersey, Gov. Casey, and James Morris. S. J. R. Wilson, who was present, was a director and participated in said negotiation.

A. M. GRANT.

Subscribed and sworn to before me this 12th day of December, 1884.

JOHN S. BOGAN,
Special Master.

Testimony of Francis M. Sursa.

FRANCIS M. SURSA, being present, was duly cautioned and sworn according to law, and testifies as follows in answer to interrogatories, to wit:

Interrogatory 1. What is your name, age, place of residence, and occupation?

Answer. My name is Francis M. Sursa; my age is 54
433 years, and my place of residence is Mt Vernon, Illinois, and my occupation was that of laborer. I was employed during parts of the years 1858 and 1859 by Van Duzer, Smith & Co. and the Mt. Vernon Railroad Company in assisting the corps of engineers in surveying and locating the line of a railroad from Ashley, in Washington county, through Mt. Vernon, in Jefferson county, and Fairfield, in Wayne county, to the eastern boundary of Wayne county, in the State of Illinois. Said line was located, as I understood it at the time, and I know that there was more or less work done on the whole line of said railroad by said Van Duzer, Smith & Co. and Mt. Vernon Railroad Company. There was a great deal of work done on said railroad. The grading was nearly all done from Ashley to Mt. Vernon and some grading was done at Fairfield. The line was chopped out and the large timber grubbed nearly through the whole line, and the ties were prepared and drawn to the line nearly all the way from Ashley to some distance in Wayne county and through the bottom of Skillet Fork creek, and other ties
434 through the timbered country nearly all the way to Fairfield.

F. M. SURSA.

Subscribed and sworn to before me December 12, 1884.

J. S. BOGAN,
Special Master.

The further examination and testimony in this case adjourned until Monday, December 15, 1884, at 10 o'clock a. m.

JOHN S. BOGAN,
Special Master and Clerk.

MT. VERNON, *December* 16, 1884.

Col. H. Tompkins, solicitor for the defendants, appears and files stipulations as to the taking of depositions in this case, and, Mr. Grant being sick and Mr. Sursa absent, the further taking of depositions until December 17, 1884, is deferred.

J. S. BOGAN,
Special Master.

MT. VERNON, *December* 17, 1884.

Col. H. Tompkins, solicitor for defendants, appears, and, Mr. A. M. Grant being still unwell and Mr. Sursa not being ready
435 to have his deposition taken, the further taking of depositions herein by agreement is adjourned for one week or until

such time in the interval as Mr. Grant — be able to appear before the special master.

And at this time Col. Tompkins objects to the 3rd interrogatory propounded to Mr. A. M. Grant and to the exhibits from 1 to 12, inclusive, and to their admission as evidence.

Also objects to interrogatory No. 4, so far as introducing the engineer's report made by S. J. Germain, and the said report as evidence.

Also to orders No. 5, 6, 7, 8 as evidence, as being incompetent, irrevalent, and immeterial.

Also to deposition of F. M. Sursa, as incompetent, immaterial, and irrevalent.

JOHN S. BOGAN,
Special Master.

MT. VERNON, ILLINOIS, *December* 24, 1884.

By request of Col. H. Tompkins, solicitor, by letter from him of this date, the further taking of testimony in this case is adjourned for two weeks.

JOHN S. BOGAN,
Special Master.

436 *Testimony of Angus M. Grant on Cross-Ex.*

MT. VERNON, ILLINOIS, *March* 23, 1885.

Cross-examination of A. M. GRANT by Col. H. TOMPKINS, solicitor for defendants, at the residence of Mr. Grant on account — illness of Mr. Grant:

Int. 1. State if you know of any of the transactions of the receipts of which you have identified.

Answer. The receipts show for themselves, but I did not see all the transfers. I saw the bonds given by Mr. Seymour to Mr. Wilson, $300,000.00. I saw a receipt of Mr. Lewis for the same amount of bonds from Mr. Wilson.

Int. 2. State if you had any connection with the Mt. Vernon Railroad Company. If so, state, and for what period and in what capacity.

Answer. I was director and secretary; director longer than secretary. I was secretary at this point until the board was abandoned. I heard of some meetings of the company in New York, but I have no knowledge of their transactions.

437 Int. 3. State if you had any dealings with Van Duzer, Smith & Co. while they were endeavoring to construct the Mt. Vernon railroad, in reference to the contract. If so, state their financial standing and what became of the contract.

Answer. Their financial standing was poor and the contract was not fulfilled or complied with.

A. M. GRANT.

Sworn to and subscribed before me this 23rd day of March, A. D. 1885.

JOHN S. BOGAN,
Sp'l Master.

Testimony of Francis M. Sursa on Cross-Ex.

MT. VERNON, ILLINOIS, *March* 23, 1885.

Cross-examination of FRANCIS M. SURSA by Col. H. TOMPKINS, solicitor for defendants, March 23rd, A. D. 1865:

Int. 1. State how far you worked with the engineers of the railroad under Van Duzer, Smith & Co. in Wayne county, Illinois.

Answer. I worked with the engineers from Mt. Vernon to Middleton, in Wayne county. I drove a team afterwards from Middleton to Fairfield, in Wayne county, and back, lots of times.

438 Int. 2. What kind of work did you do?

Answer. I drove pegs for the engineers between Mt. Vernon and Middleton, and hauled provisions from Fairfield to Middleton and from Middleton to Fairfield, back and forwards.

Int. 3. You say ties were delivered along the line of the railroad. Do you know who delivered them and whether they were paid for or not?

Answer. I know ties were delivered along the line. I don't know who delivered them or whether they were paid for or not.

Int. 4. Did Van Duzer, Smith & Co. or the Mt. Vernon Railroad Company build any part of three miles of railroad in Wayne county, Illinois, or any part thereof?

Answer. They graded a little of the road, but I never saw any ties put down, or iron either, on the road-bed.

F. M. SURSA.

439 Subscribed and sworn to before me, at office, March 23, A. D. 1885.

JOHN S. BOGAN,
Special Master.

Testimony of W. Duff Green for Defendant.

MT. VERNON, ILLS., *April 4th*, 1885.

Dr. W. DUFF GREEN, being present, was duly cautioned and sworn according to law, and testifies as follows in answer to interrogatories, to wit:

Int. 1. State your name, age, occupation, and place of residence.

Ans. W. Duff Green; age, 64 years; occupation, doctor; residence, Mt. Vernon, Jefferson county, Illinois.

Int. 2. State if you were connected with the Mt. Vernon Railroad Company in 1868, and what official position, if any, you held in such company?

Answer. Our record book of the company is lost. I succeeded Gov. Casey as president. I think I was president in 1868,

440 and I was one of the guarantors of some of the debts of the old company.

Int. 3. State if you had anything to do with buying in any prop-

erty and franchises of the company at the sale under the decree in the foreclosure case of Kennicott and others against the Mt. Vernon Railroad Company in the United States court for the southern district of Illinois.

Answer. I don't know what suit it was sold under. We borrowed $1,000.00 or $1,200.00 from Mr. Joel F. Watson to buy the road-bed from Mt. Vernon to Ashley in at that sale. Mr. Thomas H. Hobbs, trustee, bought the property in for us at Springfield, Ills., for $1,000.00 or $1,200.00 by agreement with Judge Scates, attorney for Kennicott and others.

Int. 4. State when the sale was made and who bid the property in and for whom the same was purchased and the amount paid therefor and how paid.

Answer. I do not recollect the time the sale was made, but
441 the records of the court will show. Mr. Hobbs, the trustee, will perhaps recollect the date of the sale and the extent of the purchase made.

Int. 5. State if you were conversant with the affairs of the Mount Vernon Railroad Company at the time of the sale under the mortgage; and, if so, what property did the company have or claim to have at that time? State fully all you may remember in regard to it.

Answer. So far as I recollect now, the Mt. Vernon Railroad Company employed Van Duzer, Smith & Co. to construct the road from Mt. Vernon to Ashley. I was a director at that time. I think Gov. Casey was president and Mr. A. M. Grant secretary. Van Duzer, Smith & Co. constructed a part of the road and obtained by such construction from the trustee of the county and railroad company about 6,000.00 acres of land. My recollection is that the Mt. Vernon Railroad Company owned the road-bed from Mt. Vernon to Ashley, in Washington county, Illinois, and the company never transferred the same to Van Duzer, Smith & Co. So far as the dates are
442 concerned, I cannot fix them in my mind definitely, the record book being lost, as I stated before, and my answers are based upon recollection.

W. DUFF GREEN.

Sworn to and subscribed before me, at office, April 4, A. D. 1885.

JOHN S. BOGAN,
Sp. Master, Clerk Circuit Court.

The above and foregoing deposition was taken by me pursuant to the notice filed in this case March 31st, 1885, signed by H. Tompkins, for respondents, and also by Judge Edwin Beecher, for complainants, Mr. J. G. Crews appearing as solicitor for Col. Tompkins, no one appearing for complainants, said deposition being taken on behalf of the respondents.

J. S. BOGAN, *Sp. Master.*

443 STATE OF ILLINOIS, } ss:
Jefferson County, }

I, John S. Bogan, clerk circuit court and a special master, &c., within and for the said Jefferson county, do hereby certify that in pursuance of the annexed order and stipulation I caused the said Angus M. Grant and Francis M. Sursa and Dr. W. Duff Green, the witnesses named in the said order and notice, and whose names are subscribed to the foregoing deposition, to appear before me on the twelfth day of December, 1884, and at other days, by agreement of parties, as in said notice specified; that previous to the commencement of the examination of the said Angus M. Grant and Francis M. Sursa they were sworn according to law to testify the truth, the whole truth, and nothing but the truth relative to the matters in controversy in the said cause, now pending and undetermined in the circuit court of the United States, between James C. Cloyd and others, complainants, and Clarissa Jordan and others, defendants, so far as they should be interrogated concerning the same; that the said
444 deposition was taken at the office of the clerk of the circuit court, in Mt. Vernon, in the said county of Jefferson, State of Illinois, on the twelfth day of December, A. D. 1884, and other days, between the hours of 10 o'clock a. m. and 5 o'clock p. m. of said day or days, and was reduced to writing by me, who am neither of the parties in said suit nor the attorney of either, nor interested in the event of the same; that after said depositions were taken by me as aforesaid the interrogatories and the answers thereto of each witness as written down were read over to each of them, and that thereupon the same were each signed and sworn to by the said Angus M. Grant and Francis M. Sursa and Dr. W. Duff Green before me at the place and on the day and year aforesaid, and that Judge Walter B. Scates appeared for the complainants, and no one present at that time in person for defendants, and Col. H. Tompkins, sol'r, appearing on Dec. 16, 1884, and filing stipulation, and on Dec. 17, 1884, entering his objections and exceptions to the foregoing depotions, and Mr. Crews appearing when Dr. Green's deposition was taken.

445 In witness whereof I have hereunto affixed my hand and official seal this 23rd day of March, 1885.

[SEAL.] JOHN S. BOGAN,
Clerk Circuit Court and Special Master.

1.

EXHIBIT 1 TO TESTIMONY OF A. M. GRANT.

NEW YORK, *Aug.* 3, '60.

S. J. R. Wilson, Esq.

DEAR SIR: As per Bain request, I undertake to give you the movements of the parties operating with the bonds of the Mount Vernon R. R. Co. In the first place, I understand Lewis agreed to purchase a bill of goods for you, which he has undertaken to do,

and so far succeeded in purchasing a small portion of them on the company's note with the bonds as collateral. From e-quiries I find Mr. Lewis does not stand as well as to responsibility as was represented, and I think it difficult for him to make the purchases.

446 I am sorry you consented to go into the last arrangement. The bonds, as I wrote you before, should not *of* been taken out of Mr. Seymour's hands. Lewis, Hersey, & Davis, I understand, are in the market trying to dispose of the bonds for goods, &c., and if things are suffered to go on in this way the bonds will all be disposed of or hypothecated and nothing to build the road with. There should be steps taken immediately to stop the opperations of Mr. Lewis and call him, as well as all others, and have a settlement made in a business-like manner, & I propose for all to meet at Mount Vernon for that purpose. I leave for home on Monday, & would like for you to write me at Logansport, and write me fully, what you think of the whole matter. I think you are deceived in Mr. Lewis. Mr. Davis I know nothing about. He appears to be the adviser of Mr. Lewis, and I think their opperations will end in a mixed-up mess much wore than Vanduzer, Smith & Co.

Yours truly, S. B. KENDRICK.

447 No. 2.

EXHIBIT 2 TO TESTIMONY OF A. M. GRANT.

LOGANSPORT, *Dec.* 22*d*, 1860.

Judge S. J. R. Wilson.

DEAR SIR: I have written you several times but have not rec'd any answer. I do not understand why you are not willing to answer my letters.

I rec'd a letter this morning from Mr. Grant, saying that you was in Mount Vernon in November last with the proxies and wished to call a meeting and elect a new board of directors and leave out all the old ones, except Lewis, Hersey, Grant, Gov. Casey, & yourself. I would ask you if I have not always acted in this whole matter with your advice and consent. I have advanced more money than all the rest of them, and have done so with the assurance from you that all should be right, and I only look to you to make it so, and I hope at least you will use your influence to have right done. I wrote you from Dalton, saying I had taken up the note the company gave the Whitfield Bank, and Mr. Crippin has done the same, and

448 I am satisfied Mr. Crippin wants nothing only what is right, & he will do right in every particular.

I wish on receipt of this you would write me fully.

Yours truly, S. B. KENDRICK.

I think there should be a meeting of the directors for the purpose of having a settlement made with all who has had anything to — with the bonds & see what has become of them, and have everything settled up. What do you think of this arrangement?

S. B. KENDRICK.

No. 3.

EXHIBIT 3 TO TESTIMONY OF A. M. GRANT.

LOGANSPORT, *March 16th*, 1861.

S. J. R. Wilson, Esq.

DEAR SIR: Your letter dated the 4th inst. & postmarked the 9th was duly rec'd. I have waited a few days before
449 writing to hear from one of the parties who will undertake to build your — if I can get matters in a right shape. It will depend very much on your action. With your assistance I can so arrange matters relative to the bonds so that the parties will take them; or, in other words, will take the lands and run the risk of the bonds. I could explain the whole matter to you if I was sure you would act with me in the matter & not favor those New York men. I leave in a few days for Dalton, Geo., and I wish you would write me fully all the particulars of what they have done and what they say they will or can do, and about what you mean as to your township organization. What have they to do with the building of the road? Write me fully about the whole matter. I feel confident I can get part-es who will build the road for the lands and will not ask them any faster than they do the work, which should *of* been the course taken on the start; and I suppose your people would not object to give the lands *in* they get the road.

Write me often & fully.

Yours, &c., S. B. KENDRICK.

450 No. 4.

EXHIBIT 4 TO TESTIMONY OF A. M. GRANT.

ST. NICHOLAS HOTEL, NEW YORK, *Aug.* 1, '60.

S. J. R. Wilson, Esqr.

DEAR SIR: I arrived here Sunday last & found your letter of July 10th. In answer would say I have seen Mr. Hersey & Mr. Lewis. I can't learn much from them. They tell me they intend to go to Fairfield in a short time for the purpose of making some arrangement to go on & build the road.

Mr. Lewis tells me he has written you fully on the subject, which I suppose will explain all about the delay you speak of in your letter to me of the 10th.

I understand also, by Mr. Hersey, that you placed all the bonds in the hands of Mr. Lewis. Probably it will be all right, but I think the proper place for them was in the hands of Mr. Seymour, the trustee. Mr. Lewis is a stranger to all, & I can't see the object in placing so much in hands without any security. From what I have seen of Mr. Lewis I should take him to be a fair man
451 and may do right. You thought the same of the other parties, and you see the trouble they have brought round.

From what I can learn from Mr. Lewis I think he intends to

make an effort to build the road or to get things in a shape so he can raise money on the bonds.

The question as to his selling the bonds and receiving the money without giving security to the company is whether the money will be properly applied. I think the bonds should *of* been left in the hands of Mr. Seymour or kept by yourself as the agent of Wayne county and when sold the proceeds properly applied; it may all come out right. I hope it may, but it is not the proper way to do the business.

I think it would be wise to call a meeting of the directors when Mr. Lewis & Mr. Hersey goes out and have all matters fully adjusted and find out, if possible, how the matter stands and hereafter do the business as business men. You can't expect to build the road unless some such course is taken.

452 From what I can learn I think Mr. Lewis prefers to go to your place without having any one else along, and I merely make these remarks so you may act in the matter understandingly.

I wish you would write me more fully how the whole matter stands, and if I learn anything more before I leave I will write you.

Write to me at Logansport, Ind.

Yours truly, S. B. KENDRICK.

5.

EXHIBIT 5 TO TESTIMONY OF A. M. GRANT.

NEW YORK, *May the* 14*th*, 1861.

Friend Wilson.

DEAR SIR: I, in accordance with my agreements with you and all parties, *I* went to see Elting's lands & found them No. one. I then came on here & found him & Hersey all right; but — is just as I expected. He, Elting, wants the surveys for the whole fifty

453 bonds before he is willing to settle the whole thing up. He is willing to put the surveys & bonds in the hands of some disinterested parties, & I think the best thing to do is for you to send them on immediately. Please make them out all straight, that there will be no more trouble. I had an offer to trade the team for a machine for you. The machine is in Elmira, & I will go and see it as soon as I return to Waverly. Please answer at Waverly as soon as you get this. Your interest shall be protected. Nothing new, only I saw your friend in Green street, & she sends her best respects to you & expects you on soon.

Yours truly, J. T. VAN DUSER.

454 No. 6.

EXHIBIT 6 TO TESTIMONY OF A. M. GRANT.

NEW YORK, *May* 22*nd*, 1861.

DEAR JUDGE: The deal with Hersey and Elting has all fell through, just as I expected. Hersey's tongue is the cause, & I have taken the whole thing back in my own hands. Will you send me an order

for Mr. Seymour to deed to me or bearer the lands that you gave to Elting? I have 3 or 4 good trades I can make and can do well for you and myself. I can trade for domestic goods any amount of them if I can get the order soon. I shall trade in this place for one of McCormick's machines for you. I like them better than any I have seen. Elting is going to help me. I hope you will come on again. I think you can make more here than there. I will ship your machine inside of 6 days. I think I shall go home to-morrow or next day and will wait for your order and come immediately back here and trade for goods. I understand Lewis & Hodge are or have made a trade for $800,000 worth of goods. I hope so.

Yours in haste. Ans. immediately.

J. T. VAN DUZER.

455 No. 7.

EXHIBIT 7 TO TESTIMONY OF A. M. GRANT.

NEW YORK, *July 26th*, 1860.

Judge S. J. R. Wilson.

MY DEAR FRIEND: Yours of the 19th inst. was duly rec'd, and I was very glad to hear that Edwards & Wabash were so favorably disposed to carry out our plans. Much longer time has already elapsed than I supposed would have passed before being on our way to your place, but I trust we (Mr. Lewis, Mr. Davis, & myself) will be ready to leave early next week. When we do leave I will telegraph that you may meet us at Zenia before we go to Fairfield. I think we should meet somewhere on the way out and have all our plans well matured before going to your place or to Mt. Carmel.

We must all "pull together" and we shall be sure to gain our object.

Mr. Lewis is at work about your goods. I believe hardware, crockery, &c., was ship'd yesterday, and I hope everything will be got off this week.

I send you enclosed the report of grain market. As soon as I can see you we will see what can be done in shipment
456 of wheat to this market.

Mr. Lewis has just rec'd a dispatch from Mr. Grant that the contract which the Mt. Vernon people had made with Mr. Baron or somebody else had fallen through.

Don't let them (the Jefferson people) get any knowledge whatever of our movements; we will treat with them after Wayne county is provided for.

Jefferson county has undertaken to carry her railroad plan without acknowledging the rights of the stockholders of the Mt. Vernon R. R. Co., and I think it is only acting right if we (parties in interest) make such arrangements as shall best protect our rights and interests.

You, on the part of Wayne county, have stood by me and done everything in your power to protect all parties that have acted fairly, and you will find me with you and your county, and you can rely

upon it we shall "win." Matters have moved slowly, but I have no reason to doubt the integrity of Mr. L. & Mr. D.

They have had too many difficulties, created by Smith, Van D. & Co., to meet.

Yours very truly, IRA HERSEY.

457 No. 8.

EXHIBIT 8 TO TESTIMONY OF A. M. GRANT.

NEW YORK, *Sept.* 3*d*, 1860.

Judge S. J. R. Wilson.

MY DEAR FRIEND: I was very glad to hear from you to-day. It is the first letter I rec'd from you since Lewis & Davis left here.

Now, Judge, I want you to come here immediately; lose no time in doing so.

Mr. Lewis has purposely misrepresented me to you. Come here and examine his accounts and my own ac's with the Co., & see for yourself who is right and who is wrong. If I have done anything wrong I am not aware of it, & so far as any bonds that have come into my hands I can answer to you to your satisfaction, but I shall not do so to Lewis.

Don't fail to come here immediately. Lewis & Davis have already raised more money on the bonds which you left with them than you are probably aware of. I wrote to you, requesting that you would not close any arrangement with them until you could see me.

The reason that I did not go out with them to your place
458 was because I was informed that they would go with Jameson, and some other reason that I will give you when I see you.

My child at the time they left was quite unwell, but if they had left other matters in proper shape I should have been in Fairfield as soon as they reached there. I think Mr. Davis has full control over Lewis. Lewis gives him as many bonds as he asks for to raise money for his & Lewis' individual expenses. These things I name to you confidentially, and only ask you to come here and examine everything for yourself.

If you cannot come here immediately please telegraph, and I will give further particulars, and also send you my ac. with the company.

I thank you for believing, as you say in your letter, "that I can show everything right." I can do so. The statement that Lewis made to you about my offering the bonds which he gave to me for real estate was not true. I never made any offer of the kind. I will explain that matter when I see you.

I repeat, do come here as soon as possible.

459 Yours very truly, IRA HERSEY.

P. S.—Please send me (unless you come on immediately) a full account of the agreement made for the extension of the R. R. through Edwards & Wabash. I suppose it to be in accordance with

agreement made between yourself, Lewis, Davis, & myself when you were here.

No. 9.

EXHIBIT 9 TO TESTIMONY OF A. M. GRANT.

NEW YORK, *Aug.* 10*th*, '60.

Judge Wilson.

MY DEAR FRIEND: I wrote to you yesterday and now write further news of the day. Mr. Lewis & Mr. Davis left yesterday for Mt. Vernon. Mr. Jamison left yesterday ev'g for same place. To-day Van Duzer, to my surprise, called at my office and informed me that he had rec'd a full acc't from Lewis, and that Lewis had given him up all his notes which had been given for goods.
460 Thus you see how far I have been imposed upon by D. & L., as they both pretended to me that they would assist Van & sell his stock, &c.; also that they would not do anything with Jamison (as they wrote to you), and then the next I hear that they are all friends and working together. Now I am sadly disappointed, and, as I cannot leave home (my child being very sick), I must request that you do nothing in any arrangement that Davis & Lewis may propose until you can see me. I will try any time next week to meet you at Logansport (if my little girl should be better), & what I write to you you will please keep as strictly confidential. I will not knowingly deceive you, and I do not now say that L. & Davis will not do as they agreed, but I must say they have not done by you as they agreed about the goods & by me as they promised. Therefore do nothing more about contract with Edwards & Wabash until you see me. Write to me by return mail, & if I can leave home I will telegraph when to meet me.

Yours very truly, IRA HERSEY.

461 No. 10.

EXHIBIT 10 TO TESTIMONY OF A. M. GRANT.

MY DEAR JUDGE: Will you please have a conversation with Mr. Davis to see how far it will be necessary to have Mr. Hersey know of our arrangements now being made without Mr. H.'s knowledge?

Yours, C. W. LEWIS.

I may be detained and not return before you go up.

C. W. L.

No. 11.

EXHIBIT 11 TO TESTIMONY OF A. M. GRANT.

FAIRFIELD, *Aug't* 27, '60.

Mr. Chas. W. Lewis.

DEAR SIR: I hereby authorize you to use the Mt. Vernon R. R. Co. bonds, now in your possession, deposited by me for the purpose of building a railroad through Wayne county—to use said bonds

for the procuring and forwarding of the St. Louis & Louis-
462 ville railroad, as the Mt. Vernon Co. cannot proceed with their line.

The St. Louis & Louisville road will be the only road we can have to pass through our county, & therefore the only means of benefitting the same.

Yours truly, S. J. R. WILSON.

Copy of original.
CHAS. W. LEWIS.

No. 12.

EXHIBIT 12 TO TESTIMONY OF A. M. GRANT.

DALTON, GA., *Oct'r 23d*, 1860.

Charles Lewis, Esqr., treas. Mt. V. R. R. Co.

DEAR SIR: Your favor of the 20 Aug't received, which I have not replied to; intended to have done so, feeling an interest in your road.

The endorsers, Messrs. Kendrick & Crippin, have not taken up the notes of the company referred to in your letter; have
463 promised to do so by returning the currency of the Bank of Whitfield. Mr. Kendrick was in New York on the 18th inst. & is probably there at this time. Something must be done with the notes. The currency for which they were given is being returned for redemption. I am not able to take it up. They have no means here to do it with. If you see Mr. K. will you urge on him the necessity of attending to it at once? I hold the coupons of thirty-four of the bonds of the company due 1st Nov'r. Send them to the Park Bank, N. Y., to be presented. I hope they will be paid, as they cost me 100 cents on the dollar; transferred to me, by the consent and approbation of the board of directors, 1st Feb'y last. I am in a great strait for money, having used all I could raise & borrow to save the bank; will be ruined unless they are paid, having borrowed money on their credit; will — it as a great favor of you to do what you can to assist me. It is a good enterprise if carried out. I was in the section of the road in May last & much pleased with the country.

Respectfully your ob't serv't, JAMES MORRIS.

(Deposition and exhibits endorsed:) Filed April 24, 1885. J. A. Jones, clerk.

464 1.

Bill Filed M'ch 7th, 1865, *in Kennicott Suit.*

Bill in chancery.

To the hon. the judges of the circuit court of the United States presiding within and for the southern district of Illinois in the 8th circuit court of the United States:

Your orator-, John W. Kennicott, Thomas Upham, Ebenezer W.

Stone, Joseph W. Wood, residing in the State of Massachusetts, would respectfully show unto your honors that by an act of the Legislature of the State of Illinois, approved February 15th, 1865, there was incorporated a railroad company by the style of "The Mount Vernon Railroad Company," which said act of incorporation is herewith exhibited as a part of this your orators' bill, and which company as aforesaid was organized for the purpose of building a railroad from Mount Vernon, Ill., to the Illinois Central railroad or its Chicago Branch, and your orators aver that under the 10th section of said act of incorporation the said company became and was organized and exercised and became entitled to all the powers and franchises of a body corporate under said act of the Legislature.

465

Your orators would further show that under the authority contained in said act and the acts referred to in said act the county court of Wayne county, Illinois, having become possessed and entitled to a large amount of swamp lands in said county under and by virtue of the act of Congress of the U. States, passed Sept. 28th, 1850, entitled "An act giving Arkansas and other States swamp and overflowed lands," and also by virtue of an act of the Legislature of the State of Illinois, approved Jan. 22nd, 1852, appropriating said lands to the several counties in which they were located, the said county of Wayne became entitled to a large amount of said swamp and overflowed land, more particularly hereinafter described and set forth.

And your orators further state that the said county of Wayne, being a county through which said Mt. Vernon railroad was to run, was, by the 9th section of said act incorporating said Mt. Vernon Railroad Company, authorized and empowered to aid in the construction of the same under the provisions of the 7th, 8th, & 9th sections of the said act.

And your orators further aver that under the authority of and pursuant to the provisions contained in the 8th section of said act incorporating the Mt. Vernon Railroad Company the county court of Wayne county did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether said lands should be mortgaged to aid in constructing said road; that notices of said election was duly given as prescribed by said order providing for said election, and that at the election so held a majority of all the votes cast at said election (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, which was as follows, to wit: "For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through said county."

466

Your orators would further show, upon the faith of said vote and in pursuance to the power given them by said acts, the county court of Wayne county did, on the 20th day of April, 1859, adopt the proposition having the highest number of votes, which was the said proposition aforesaid, and did order, adjudge, and determine to ap-

propriate the swamp land of Wayne county to aid in constructing the railroad aforesaid and to execute a mortgage or conveyance in trust, in conformity to such proposition, and did, in pursuance of such order on said last day, make, execute, and deliver to one Isaac Seymour, as trustee, two certain indentures bearing date as aforesaid, conveying in trust the lands therein described, said lands being the swamp land of said county, for the uses and purposes therein set forth, copies of which are filed as Exhibits A & B in this case, and which your orators pray may be taken and considered a part of this your orators' bill as fully as if inserted therein.

Your orators further aver that the said Seymour was duly selected, both upon the part of the county of Wayne and the said railroad company, to execute the trust created by said indentures.

Your orators would further show that the said railroad company deemed it advisable for the constructing and maintaining their said road to issue, to wit, eight hundred thousand dollars in construction bonds, for the purpose of raising funds for the purposes aforesaid, which said bonds were issued as follows, to wit: Four hundred of $500 each; six hundred of $1,000 each, making in all $800,000 as aforesaid, which said bonds are payable in fifteen years from the date thereof, to wit, from the 20th day of April, A. D. 1859,
467 at the Bank of North America, in the city of New York, with seven per cent. per annum interest semi-annually on the first day- of May and November in each year, and for the said interest coupons or warrants for each payment of interest was attached to said bonds, being payable to Isaac Seymour or bearer, said coupons being payable at the place aforesaid.

Your orator- would further show that, for the purpose of giving further security for the payment of said bonds so issued as aforesaid, the said railroad company did, on the 20th day of April, A. D. 1859, execute and deliver to said Isaac Seymour a deed of mortgage of said railroad of the said Mount Vernon Railroad Company, constructed and to be constructed from the vil-age of Ashley, Washington county, Illinois, to the east bound-ry of Wayne county, Illinois, in the said State of Illinois, together with all of its, said compa-y's, real estate, lands, tenements, and hereditaments acquired and appropriated for the purpose of a right of way for a single or double track railroad, and all the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, workshops, superstructures, and right of the said railroad company, acquired at the date of mortgage or thereafter to be acquired; and also all the rails, bridges, ways, pens, depots, engines, houses, car-houses, station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of the said railroad company whatsoever and wheresoever then owned by said railroad company or thereafter to be owned by said company; and also all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, car-ages, tools, machinary, and equipments for the railroad of said company or which it might thereafter acquire or receive for the purpose of useing in connection with the said railroad; and also all goods and chattels employed in and about the operation of said

railroad or thereafter to be owned or acquired in any way relating or appertaining to the said railroad, together with all the titles,
468 rents, issues, incomes, profits, money, rights, benefits, and advantages to be derived, received, or had therefron (of the said railroad company) in any way whatsoever, and all of which were declared by said mortgage to be appurtenances and fixtures of the said railroad and to be taken as a part thereof, and to be seperated therefrom, which said mortgage was upon the condition therein more fully shown, a copy of which mortgage is herewith filed and asked to be made a part of this your orators' bill.

Your orator- further allege that the said construction bonds referred to in said mortgages were issued by said railroad company, duly countersigned by said trustee, and were negotiated in the market to raise funds for the construction of said railroad; that your orators several-y became possessed as *bona fide* holders of the bonds following, to wit:

Your orator, John W. Kennicott, of bonds Nos. 14, 15, 34, 212, 252, & 254, of $500 each, and there is now due and unpaid on said bonds twelve semi-ann-al installments of interest.

Your orator, Thomas Upham, of bonds Nos. 471, 460, for $1,000 each; Nos. 113, 226, & 234, for $500 each, and there is now due and unpaid on said bonds $—, twelve semi-an-ual installments of interest.

Your orator, Ebenezer W. Stone, of bonds No. 353, for the sum of $500, and there is now due and unpaid on said bonds twelve installments of semi-an-ual interest.

Your orator, Joseph W. Ward, of bonds Nos. 45, for $500; No. 48, for $500; No. 19, for $500; No. 407, for $1,000; No. 40, for $500; No. 252, for $500; No. 373, for $500; No. 41, for $500; No. 56, for 1,000; No. 351, for $1,000; No. 352, for $1,000; No. 356, for $1,000; No. 357, for $1,000; No. 358, for $1,000; No. 372, for $1,000; No. 402, for 1,000; No. 374, for $500, upon which is now due twelve semi-an-ual installments of interest.

Your orator, Joseph W. Ward, the further bonds of No. 386, for $1,000; No. 359, for $1,000; No. 323, for $1,000; No. 268, for $1,000; No. 436, for $1,000; No. 276, for $1,000; No. 409, for $1,000;
469 No. 408, for $1,000; No. 130, for $1,000; No. 59, for $1,000; No. 388, for $1,000; No. 390, for $1,000; No. 395, for $1,000; No. 396, for $1,000; No. 397, for $1,000; No. 404, for $1,000; No. 405, for $1,000; No. 406, for $1,000; No. 368, for $500; No. 369, for $500; No. 366, for $500; No. 365, for $500; No. 279, for $500; No. 280, for $500; No. 364, for $500; No. 363, for $500; No. 281, for $500; No. 282, for $500; No. 362, for $500; No. 361, for 500; No. 400, for $500; No. 360, for $500; No. 359, for $500; No. 358, for $500; No. 355, for $500; No. 253, for $500; No. 230, for $500; No. 43, for $500; No. 93, for $500; No. 267, for $1,000, upon which there is due and unpaid twelve semi-an-ual installments of interest upon coupons thereto attached.

Your orators would further show that a large amount of the interest on the coupons attached to said bonds is due and unpaid, and that demand has been duly made for the payment thereof.

Your orators would further show that neither said railroad com-

pany nor said county of Wayne made any provisions for the payment of said interest at the place of payment designated in said coupons, but, upon the contrary, made default, by which said default the condition of the said several deeds of mortgage or conveyance became forfeited and absolute in said trustee for the benefit of your orators and others having, as *bona fide* holders, any of the bonds issued as aforesaid and upon which interest remains unpaid.

Your orators further aver that by the death of said trustee said trust has become incapable of execution without the aid of this honorable court in the premises. Now, inasmuch, therefore, as your orators are without adequate remedy at law, yours honors are respectfully asked to take cognizance of this your orators' bill, that the said the board of supervisors of the county of Wayne and the said Mount Vernon Railroad Company made parties defendent herein, and that a subpœna in chancery issue against them, and that they be required to answer all and singular the allegations of this bill according to the practice and rule of this honorable court, and that they be required to specifically set forth and disclose a full,
470 ample, and true account of whatever may have been done (if anything) under the deeds and mortgages aforesaid, and that an account may be taken of what may be due your orators on the coupons aforesaid. All your orators bring this bill on behalf of themselves and all other *bona fide* holders of any of the bonds issued as aforesaid who may *or* proper terms avail themselves of the decree made herein, and your orators ask for such other relief as may seem to your honors just and equitable; and in duty bound your orators will ever pray.

HAY & CULLOM WELDON.

(Indorsed:) Filed March 7th, 1865. P. P. Enos, clerk.

And afterwards, to wit, on the first day of October, in the year last aforesaid (1866), came again said complainants, by their said solicitors, and filed in said clerk's office their 2nd amended bill of complaint, which is in the words and figures following, to wit:

2.

2d Amended Bill in Kennicott Case. Filed Oct. 1st, 1866.

2nd amended bill of complaint.

UNITED STATES OF AMERICA, *Southern District of Illinois:*

To the honorable the judges of the circuit court of the United States for the southern district of Illinois, in the 8th circuit court of the United States:

Your orators, John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, and Austin Myers, who are citizens of the State of Massachusetts, residing in said State, would respectfully show unto your honors that heretofore, to wit, the fifteenth day of

February, A. D. 1855, the Legislature of the State of Illinois, by an act entitled "An act to incorporate the Mount Vernon Railroad Company," approved the said 15th day of February, 1855, enacted
471 that all such persons and corporations as should become stockholders under the provisions of said act and their successors be, and we are thereby, created a body politic an- corporate by the name of the Mount Vernon Railroad Company, with all the rights and powers incident and necessary to such corporation, which said act of incorporation is herewith exhibited as a part of the bill of complaint.

And your orators further show that by said act of incorporation it was provided that when an amount equel to one thousand dollars per mile of the route of said road was subscribed the subscribers might meet at Mount Vernon and elect seven directors and as many more from time to time as may be fixed by law; that by said act of incorporation there was created an incorporation by the name and style of the Mount Vernon Railroad Company; that after the incorporation of the said Mount Vernon Railroad Company by the Legislature of the State of Illinois and before the — day of —— there was subscribed to the capital stock of said corporation an amount equal to one thousand dollars per mile of the route of said road, to wit, the sum of — dollars; that after the said subscription to the capital stock of said company, as required by said act of incorporation and as hereinbefore set forth, the subscribers to said capital stock, to wit, on the —, met at Mount Vernon, Illinois, and elected a board of seven directors for said company, and also at the same time there was duly elected a presedent, secretary, and treasurer of said company, and said company became then and there duly organized under & by virtue of said act of incorporation; that said railroad company was and is located in the State of Illinois, and is a citizen of said State, and is a body corporate under the laws of Illinois, and was and is entitled to all the powers & franchises of a body corporate under its act of incorporation.

And your orators further show unto your honors that said Mount Vernon Railroad Company, on the 20th day of April, 1859, for the purpose of raising funds from time to time for the construction and completion of its railroad and branches authorized by said
472 act of incorporation, and for the purchase of iron and other materials to be used therein, and for the expenses of the organization and maintenance of the said corporation and compensation of the officers and agents, trustees, engineers, and other necessary assistants, made and executed six hundred bonds of one thousand dollars each, dated the twentieth day of April, 1859, and each of said bonds was made payable to Isaac Seymour or bearer, which said bonds and the money thereon to become due said railroad company promises to pay, on presentation thereof, to the holder thereof, at the Bank of North America, in the city of New York, on the first day of May, 1874, with interest thereon at the rate of seven per centum per annum, — semi-annually, on the first day of May and November in each year, until said principal sum should be paid, on presentation of the proper interest warrants annexed to said bonds, at the

said Bank of North America; and it was provided in each of said six hundred bonds that full payment of the principal and interest of the whole issue of said bonds is secured by a mortgage, bearing even date with said bonds, to said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the State and county for the purpose of construction and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company, *to* which said bonds were duly executed by the president and treasurer of said railroad company under the corporate seal of said company, to *use* each of which said bonds there was and is attached interest warrants for the semi-annual interest to grow due upon said lands, for the sum of thirty-five dollars each, payable the first day of May and November in each year after the date of said bonds to the time when the principal sum mentioned in said bonds became due and payable by the terms of each of said bond-, and made payable at the Bank of North America, in the city of New York, and were duly signed by the secretary of said company.

473 And your orators further show that at the same time of the execution by the said company of the above-mentioned six hund*e*rd one-thousand-dollar bonds the said Mount Vernon Railroad Company made and executed four hund*e*rd bonds each for the sum of five hund*e*rd dollars, payable at the same time and in the same manner and at the same place that the above-mentioned one-thousand-dollar bonds were; that said last-mentioned bonds were issued for the same purpose & objects that said first mentioned were issued for, and payable, with interest at the rate of seven per centum per annum, semi-annually at the Bank of North America, in the city of New York, on the first day of May and November, in each year, until the principal sum in said last-mentioned bonds was due and payable; that to each of said last-mentioned bonds there *was* attached interest warrants for the semi-annual interest due upon said bonds, payable at the same time and place with the interest warrants attached to said one-thousand-dollar bonds, which last-mentioned coupons were executed by the said secretary of said company; that said one-thousand-dollar bonds were numbered from one to six hund*e*rd and said five-hund*e*rd-dollar bonds were numbered from one to four hund*e*rd; that said last-mentioned bonds were secured by the same mortgage as was provided for the securing of said one-thousand-dollar-bonds, & all of said bonds were for the same object and purpose, and was in fact but one loan for the benefit of said railroad company; that all of said bonds were issued by order of the board of directors of said company at a meeting of said board of directors duly held at the office of the company for that purpose.

And your orators further show unto the court that on the same twentieth day of April, 1859, and at the same time of the execution of the said above-mentioned bonds, and for the purpose of securing the payment of said bonds & the interest thereon as the same should become due and payable, according to the terms and conditions of the interest warrants attached to each of said bonds, the said Mount

Vernon Railroad Company made, executed, and delivered its
474 certain indenture of mortgage, dated the 20th day of April, 1859, made payable to Isaac Seymour, Esquire, cashier of the Bank of North America, at the city of New York, as trustee, for the purpose as mentioned in said indenture of mortgage; that said Mount Vernon Railroad Company in said indenture was described as the party of the first part and Isaac Seymour as party of the second part, in which said indenture it is recited: Whereas the parties of the first part, for the purpose of raising funds from time to time for the construction and completion of the railroad and branches authorized by the provisions of the said act of incorporation and for the purchase of iron and other materials to be used therein and for the expenses of the organization and maintenance of the said corporation and compensation of the officers and agents, trustees, engineers, and other necessary assistants, propose to execute and deliver their construction bonds or obligations in pursuance of the provisions of the act aforesaid, and thereby to become indebted to divers persons, bodies politic or corporate, wh- shall become holders of the said construction bonds or obligations, in the just and full sum, in the aggregate, of eight hunderd thousand dollars, lawful money of the United States of America, secured to be paid by their six hunderd construction bonds or obligations of and for one thousand dollars each, and by their four hunderd construction bonds or obligations of and for five hunderd dollars each, providing for the payment unto said persons, associations, bodies politic or corporate, and their executors, administrators, successors, survivors, and assigns, respectively, of one thousand dollars and five hunderd dollars, named in said construction bonds or obligations, respectively, on the first day of March, 1874, and also interest for the same at and after the rate of seven per centum per annum, payable on the first day of ev-ry month of March and September ensuing the date of the said construction bonds or obligations until the principal sums and interest named in said construction bonds or obligations, respectively, shall be severally paid and satisfied in the manner and form in the said construction bonds or obligations set forth and declared, as by reference to said bonds will more fully appear, which said con-
475 structions bonds or obligations refer-d to in said indenture of mortgage are the same bonds hereinbefore set forth and described in this bill of complaint and no other.

And it is further recited in said indenture that the payment of said construction bonds or obligations is primarily secured by a mortgage on one hunderd thousand acres of land in said county of Wayne, bearing even date of the said indenture executed by said railroad company; that the execution of the mortgage of said lands in Wayne county was by the judges of the county court of said county of Wayne, pursuant to the charter of said Mount Vernon Railroad Company, as provided in said mortgage; that by the said indenture of mortgage the said Mount Vernon Railroad Company, under and pursuant to the powers vested in it by the laws of the State of Illinois and the proceedings thereunder, and also under and pursuant to a resolution of its board of directors,

duly made and entered upon the minutes of the proceedings of its said board, for the purpose and with the intent better to secure the payment of the said bonds, with the interest thereon, according to the tenor and effect of the same, and in consideration of one dollar, lawful money of the United States of America, by said party of the second part (to wit, by the said Isaac Seymour, trustee) in hand well and truly paid to the said party of the first part at or before the ensealing and delivering of said indenture, the receipt whereof was acknowledged in and by said indenture, granted, bargained, sold, and conveyed, assigned, transfer-ed, and set over, enfeoffed, conveyed, and confirmed, and by said presents did grant, bargain, sell, assign, transfer, and set over, convey, and confirm, to the parties of the second part in said indenture named as trustees and in trust, and to his heirs, executors, administrators, and his or their successors, all and singular the railroad of the said Mount Vernon Railroad Company constructed and to be constructed from the vil-age of Ashley, Washington county, to the eastern bound-ry of Wayne county, in the State of Illinois, together with all its, said company'-, real estate, lands, tenements, hereditaments, ac-
476 quired and appropriated for the purpose of a right of way for single and do-ble track railroads and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures, and also all and every the privileges, franchises, and rights of the said party of the first part acquired at the date of said mortgage or thereafter to be acquired by it, and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses. station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of the said party of the first part in said indenture, wheresoever and whatsoever then owned by the said party of the first part or thereafter to be owned by it, together with all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, car-ages, tools, machinery, and equipments for the railroad of the said party of the first part, or which it may thereafter acquire or secure for the purpose of using in construction with the operation of the said railroad, and also all goods and chattels employed in and about the operation of said road then owned by the said party of the first — or thereafter to be owned or acquired by it in any way relating or appertaining to the said railroad, together with all the toll-, rents, issues, incomes, profits, moneys, rights, benefits, and advantages to be derived, received, or had therefrom by said party of the first part in any way whatsoever, all of which are declared to be appurtenances and fixtures of said railroad, to be taken as part thereof and not to be seperated therefrom; to have and to hold the premises, property, rights, privileges, and franchises in said indenture set forth and assigned or intended so to be and every part or parcel thereof, with the appurtenances, to the said Isaac Seymour and his successors in trust for the person or persons, bodies politic or corporate, who should become holders of said lands or any of them, subject to the terms and stipulations of the said bonds and the several laws and acts of the Legislature of the State of Illinois relating

to said company, and said indenture was upon the condition and express understanding and provision that if the said corporation,
477 parties of the first part to said indenture, its successors or assigns, shall well and truly pay or cause to be paid the sum of money mentioned to be paid in the said bonds, to secure which said mortgage was made, and the interest thereon at the time and in the manner as respectively mentioned in said bond, according to the true intent and meaning thereof, that the presents mentioned in said indenture and the estate thereby granted should cease, determine, and be void; and the said party of the first part in said indenture, in and by said indenture, covenant and agree to well and truly pay the said sums of money mentioned in the said bonds to be paid, respectively, together with the interest thereon; and it was in and by said indenture provided that in case default shall be made in the payment of the interest on any of the said bonds or any part thereof on any day when the same should have been lawfully demanded and the same shall remain in arrears sixty days thereafter, or if the default should be made in the payment of the principal of the said construction bonds and the same cannot be realized from the avails or by a sale of the lands described in a mortgage hereinafter described & set forth and bearing even date with said indenture executed by said railroad company, it shall and may be lawful, and by said indenture it was provided, that the party of the second part was thereby expressly and fully authorized and empowered to enter upon and in that case take possession of all and singular the said railroad and the property and premises thereby in said indenture mortgaged, and, through the agency of persons he might from time to time appoint, collect and receive the tolls, incom-s, and profits of said roads thereby conveyed for the purpose of the security of said bonds above set forth; and said trustee thereupon, within such reasonable time as to him should seem proper, not less than sixty days, and upon an advertisement of at least six weeks, to be had in one or more newspapers published in Chicago and Springfield, in the State of
478 Illinois; Indianapolis, in the State of Indiana, and in the city of New York before the time fixed for such sale, which advertisement should mention the day, hour, and place at which such sale shall be had, and shall proceed to sell at public auction, to the highest bidder, as well the said railroad franchises as all other property and premises thereby granted and conveyed or intended so to be, and all ben-fit and equity of redem-tion of the party of the first part therein whatsoever, with the benefit of the franchise and subject to the conditions thereof; and it was further provided that the attorney for said company for the purpose, said trustee, his heirs, executors, and administrators or their successors, shall have full power and authority to make and deliver to the purchaser or purchasers good and sufficient deed or deeds of conveyance for the road, lands, tenements, and real estate in fee simple or otherwise according to the title or interest of the said company therein and good and proper conveyance and assignments of the property thereby granted and assigned; that such sale so to be made shall be a perpetual bar, both at law and equity, aga-nst the party of the first part, its suc-

cessors and assignes, and all persons claiming by, from, or under it or them in anywise; that such sale and conveyance so to be made shall operate to transfer all the right, title, and interest, reversionary or otherwise, of the said The Mount Vernon Railroad Company in the premises so sold and conveyed; that out of the monies arising either from the income or profits of the said road or the sale thereof, after making certain deductions mentioned in said indenture, the same trustee, his heirs, executors, administrators, or successors, shall first pay and discharge all costs, charges, counsel fees, and expenses incurred in and about his proceedings in the execution of the trusts of said mortgage, including a reasonable compensation to himself for his services therein; and, second, to apply so much of the residue of said monies as may be necessary to pay and discharge in full all the monies due on said bonds thereby intended to be secured, with the interest thereon then due; that said indenture was duly executed by the president and treasurer of said railroad company under corporate seal of said company thereto attached and the execution thereof acknowledged before the clerk of the circuit court of Wayne county, Illinois, on
479 the day of the date of said indenture, and said indenture was afterwards duly recorded as a mortgage in the recorder's office of deeds of Wayne county, Illinois, on the 20th day of April, 1869, and also recorded in the office of recorder of deeds in the county of Jefferson on the 21 day of April, 1869, and in the office of recorder of deeds for Washington county, Illinois, the 22 day of April, 1869, as will more fully appear by the certificate of the recorder of deeds of the several counties in which said indenture was recorded; a copy of which mortgage, acknowledgement, and certificates of recording the same is hereto attached and made an exhibit and also part of the bill, the same as tho' copied into the body of the bill.

And your orators further show unto this court that by virtue of the seventh, 8, 9, & 10 sections of an act entitled "An act to incorporate the Mount Vernon Railroad Company," hereinbefore set forth, the said corporation was authorized to borrow such sums of money as it might deem advisable & upon such terms as it might agree for the carrying out of the objects of said act, and might provide any security; also the county court of Jefferson county, Illinois, were authorized and empowered to subscribe for said amount of the capital stock of said company as they might think proper; also they might issue bonds of the county and provide for the payment of the principal and interest thereof by sale or mortgage, one or both, of the swamp and overflowed lands of said county, and dispose of such bonds for money or otherwise in payment of the subscription aforesaid upon such terms and in such mode as they should deem —, or, also, they might make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they should deem best for the public interest of said county; that by the ninth section of said act it was provided that before any disposition should be make [made] of said swamp and overflowed lands or any subscription to the stock of said company the county court might, at any regular or -pecial term of

said court, order a special election to be held for the purpose of taking the sence of the qualified voters of the county thereupon,
480 giving such notice thereof as they might deem proper, and which should be conducted and returns made, canvas-ed, and published in all respects as other county elections; also the said county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in constructing of said road; which said proposition shall be printed at large as an election ticket, and the voters may express their will in said proposition by yea and nay in said tickets. Those opposed to any and all the propositions or plans may express their dissent by voting "nay" on a seperate ticket. The proposition or plan having the highest number of votes shall be adopted by the county court, provided the majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election. That by the tenth section of said act any county through which said road may run and every county through which any other railroad may run — which said road named in said act may be joined, connected, or intersected, may and are hereby authorized and empowered to aid in the construction of the same or of such other road with which it may so connect; and for that purpose the provisions of the 7, 8, & 9th sections of said act, hereinbefore set forth, shall extend, include, and be applicable to every such county and every such railroad.

And your orators further show that at the time of the passage of such act of the Legislature of the State of Illinois, to wit, on the 15 February, 1855, there was then a line of railroad laid out & established in and through the county of Wayne, in the State of Illinois, by the Belleville & Fairfield Railroad Company, a corporation enacted by & duly organized under and by virtue of the laws of Illinois; that said last-mentioned company had previous thereto become fully organized with all proper & necessary officers, as requierd by the law under which said company was created; that afterwards, and about the 30th day of April, A. D. 1855, the said board of directors and the president of the Mount Vernon Railroad Company and the board of directors & the president of the Belleville & Fairfield *R.* Railroad Company and the secretaries of both of said
481 railroad company*s* met at the office of the Mount Vernon Railroad Company, in the town of Mount Vernon, in the county of Jefferson, Illinois, and, by a mutual agreement of the said two railroad company*s* and under and by virtue of the laws of the State of Illinois, the said two roads were joined, connected, or intersected, and also said two roads by such agreement were then and there so consolidated as to make but one road running through said counties of Wayne and Jefferson; that by said joinder, connection, or consolidation of said two companies under said agreement the said companies were organized under the name of the Mount Vernon Railroad Company; and the said board of directors and said compa-*ys* did then and there elect a joint board of directors for said connected joined, intersected, or consolidated companies in the place

and stead of the several boards of directors of said companies, and also did then and there elect a president, secretary, and treasurer of said consolidated companies, who entered upon the respective duties of their said offices; that by said joinder, connection, or intersection, or consolidation of said two companies in the manner above set forth, under the said name of the Mount Vernon Railroad Company, said last-mentioned company, the county court of Wayne county, Illinois, by virtue of the 7, 8, 9, & 10th sections of the act hereinbefore set forth, were authorized to make and execute the mortgage and deed of trust hereinafter set forth and to make such disposition of the swamp and overflowed lands in the county of Wayne aforesaid in aid of the construction and maintenance of the said last-mentioned company's railroad as they might deem best for the public interest of said county of Wayne.

And your orators further show unto this court that after the joinder, connection, and intersection or consolidation of said two roads, as hereinbefore set forth, and before the execution of the said mortgage and deed of trust hereinafter set forth, *by* the county court for said county of Wayne, at a term of said court held at the court-house in the county of Wayne for that purpose, by the judges thereof,

482 did order and dispose of the swamp and overflowed lands in the county of Wayne, then being the property of the county of Wayne and said lands hereinafter particularly described. By order and decree that said county court of Wayne county executed and delivered to said last-mentioned railroad company a mortgage and deed of trust of and upon the above-mentioned lands as a security for the payment of the bonds hereinabove set forth, issued by the said Mount Vernon Railroad Company, and to aid by said lands and the mortgage and trust deed said railroad to construct and maintain said railroad, and by such mortgage and deed of trust to pledge and mortgage said lands for the payment of said before-mentioned bonds, & to the extent and value of said lands to assume the payment of said bonds.

And your orators further show that before any disposition was made by said county court of Wayne county of the swamp and overflowed lands in Wayne county belonging to said Wayne county, Illinois, at a special term of said county court of the county of Wayne held on the 28th day of September, 1855, an order was duly made and entered by said court whereby a special election was ordered and directed to be held on the 5th day of November, 1855, for the purpose of taking the sence of the qualified voters of the county of Wayne upon the mortgaging of that portion of the overflowed and swamp lands or to donate said lands as a bonus in the said county, & hereinafter described, for the purpose of aiding in the construction and maintenance of the said The Mount Vernon railroad; and the said county court did then and there order public notice of such special election to be given by advertisement, in accordance with the statute laws of the State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did then and there prepare a proposition containing a brief, clear, and distinct

idea of the plan proposed by them for aiding in constructing said road, and did cause the said proposition to be duly printed at large as an election ticket and furnished the same to the qualified voters of — county, to be used at such election, in the words and figures following, to wit:

For appropriating the swamp lands of Wayne county as a
483 bonus to any company for building a railroad through said county; aga-nst the same; that in pursuance of said order and notice a special election of the qualified voters of said county was duly held on the said 5th day of November, 1855, and conducted in all things in conformity to the provisions of said act incorporating said railroad company, and the laws of the State of Illinois, and the returns of such election made, canvas-ed, and published in all respects as other county elections are required to be in and by said laws; that at said election the said proposition or plan above stated received the highest number of votes and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by casting and voting "yea" upon the said several printed propositions or tickets cast by said voters at the said election; that afterwards and on or about the 20 day of April, 1859, in open court, at a term of said county court of Wayne county, upon the returns of said special election being duly made, canvassed, and published as required by law, the said county court of the county of Wayne did adopt the proposition or plan having the highest number of votes as above set forth, and did order, adjudge, and determine to execute a mortgage upon the swamp and overflowed lands of the county of Wayne to Isaac Seymour, trustee, for the benefit of the Mount Vernon Railroad Company, joined, connected, intersected, or consolidated, as before mentioned, in conformity to said proposition or plan and according to the provisions and terms of the said mortgage hereinafter set forth and discribed, for the purpose of aiding in the construction and maintaining the said Mount Vernon railroad.

And your orators further show unto the court that the said bonds hereinafter described, to the amount of eight hundred thousand dollars, and the said first-above described mortgage, was executed and delivered by the said The Mount Vernon Railroad Company after the joinder, connection, intersection, or consolidation of said two companies hereinbefore set —, and said *lands* were the bonds
484 of said joined, connected, or consolidated companies.

And your orators further show unto this court that the lands mortgaged to said railroad by the county of Wayne, as hereinafter set forth and described, were lands appropriated to the county of Wayne, Illinois, by an act of the Legislature of the State of Illinois, entitled "An act to dispose of the swamp and overflowed lands and to pay the expenses of selecting and surveying the same," approved the 22d June, 1852.

And your orators further show unto this court that the county court of Wayne county, Illinois, on or about the 20th day of April, 1859, by virtue of the law of the State of Illinois and the order and determination of said county *county* court, and to carry out the plan

or proposition submitted to the qualified voters of said Wayne county, as before set forth and assented to*o* by a majority of all the voters of said Wayne county, became endowed with the requisite power and -as thereby to dispose and mortgage the swamp and overflowed lands of Wayne county to the Mount Vernon Railroad Company, joined, connected, and intersected or consolidated as aforesaid, for the purpose of aiding the construction and maintenance of said last-mentioned company's railroad, and the said county court having also determined and adjudged it best for the public int*rust* of the said county of Wayne that the lands hereinafter described, being the swamp and overflowed lands of said Wayne county, should be conveyed in trust to Isaac Seymour, of New York, for the uses, purposes, and benefits as set forth in said mortgage hereinafter set forth, upon the terms and conditions set forth in said mortgage.

And your orators further show unto the court that afterwards, to wit, on or about the 20th day of April, 1859, the said county court of Wayne county, Illinois, *by virtue of the* by the judge of the said county court, to wit, Samuel J. R. Wilson, judge, and Thomas M. Scott, associate judge of the county court of Wayne county, Illinois, by virtue of the power and authority given them and said county court by the laws of the State of Illinois, and the said vote of the qualified voters of said Wayne county, as above set forth,
485 and to carry into effect the order and determination of said county court, *and* above set forth, in respect to the swamp and overflowed lands of Wayne county, and also for the purpose of donating the said swamp and overflowed lands to the Mount Vernon railroad to aid in its construction and maintenance, as before set forth, and also for the purpose of securing and for the payment of the said bonds, heretofore set forth and described, executed by the said Mount Vernon Railroad Company, joined, connected, intersected, or consolidated in the manner as before stated, and to donate and dispose of said swamp and overflowed land to the last-mentioned railroad company for the purpose aforesaid, they, the said county court of Wayne county, in the manner and form as hereinafter described, in an indenture of mortgage, did, under the hands and seals of said judges of said county court and the official seal of said court, on the day and year last aforesaid and for the purpose aforesaid, make, execute, and deliver to Isaac Seymour, of the city of New York, as trustee, an indenture of mortgage upon the swamp and overflowed lands of Wayne county, which lands so mortgaged or donated by virtue of said mortgage is in said indenture of mortgage particularly described and set forth, a copy of which indenture of mortgage is hereunto annexed and which your orators pray may be taken and made part of this bill of complaint.

That in and by said indenture of mortgage said lands described in said mortgage, amounting in the aggregate to one hundred and three thousand eight hundred and eighty acres, less thirty-eight hundred acres pre-em-ted, were by said county court donated, granted, barga-ned, sold, remised, released, conveyed, and confirmed unto said Isaac Seymour, in trust, for the first securing the payment of all the bonds and interest thereon, as provided in and by said

bonds, as said interest should become due and payable, and to enable said trustee to ra-se money by the sale of said bonds and said interest provided for in said bonds, and to enable said trustee to pay said the principal of said bonds when it should become due in aid of the construction and maintaining aforesaid railroad and
486 for the use and benefit of said Mount Vernon Railroad Company, together with all and singular the emoluments, income, and advantages, tenements, heriditaments, and appurtenances thereunto belonging or in anywise appertaining, and the -eversion and reversion-, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, at law and in equity, of the said county court and said county of Wayne of, in, and to the same, each and every part and parcel thereof, with the appurtenances; that it was provided in said last-mentioned mortgage that all and singular the lands and tenements granted by said indenture & each and every parcel thereof be held by said trustee and his successors as joint tenants & not tenants in common for the uses and purposes set forth in said indenture, and also that said lands be sold and conveyed in payment of the interest upon said bonds as the same became due and the principal of the same when it became due, and for such other purposes as is described and set forth in said indenture; that by said indenture all the estate of said county court of the county of Wayne and said Wayne county in the said lands and tenements set forth in said indenture was donated and conveyed as aforesaid, subject, however, to any and all equitys — said county court, Wayne county, and said last-mentioned railroad company may have in the same; that said mortgage was duly acknowledged by the said judge of the county court before — clerk of said court the 20 April, 1859, and certified thereto by said clerk under seal of said court, and such acknowledgments and [were] certified to on the said indenture, and said indenture duly recorded in the office of recorder of deeds of Wayne county 6 day of ——, 1859, in Book of Mortgages B, on pages 341 to 358, inclusive, by the clerk of the circuit court of said Wayne county.

And your orators further show unto the court that said Mount Vernon Railroad Company, after its joinder, connection, intersection, or consolidation as aforesaid, laid out the line of railroad from the town of Ashley, in Washington county, Illinois, to the town of Mount Vernon, in the county of Jefferson, did purchase and did acquire the title to lands & real estate, in width one
487 hundred feet, and lands for turn-outs, switches, and depot buildings, from said town of Ashley to Mount Vernon. A particular description of said lands for said line of railway, turn-outs, switches, and depots is given in an exhibit her-to annexed and made part of this bill.

And your orators further show that after the execution of the said bonds hereinbefore set forth and after the execution and delivery of said mortgage by the said Mount Vernon Railroad Company and after the execution of said indenture by the said county court of Wayne county in the form & manner before set forth the

said trustee named in the said mortgages & the said Mount Vernon Railroad Company sold a large amount of said bonds for a valid consideration paid therefor by various parties, the purchasers of the same; that from said original purchasers of said bonds your orator, John W. Kennicott, became the *bona fide* owner and holder of the following bonds for the sum of five hundred dollars, with the interest warrants thereto attached, to wit, bonds numbered 14, 15, 34, 212, 252, and 254, and there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Thomas Upham is the *bona fide* owner and holder of said bonds for one thousand dollars each, numbered 471, 460, & bonds for five hundred dollars each, numbered 113, 226, & 234, and that there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Ebenezer W. Stone is the *bona fide* owner and holder of the said bonds, numbered 353, for the sum of five hundred dollars, and there is due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Joseph W. Ward is the *bona fide* owner and holder of the following-numbered bonds for $500 each, No-. 45, 48, 40, 4, 373, 374, and for one thousand dollars each, Nos. 352, 357, 372, 351, 356, 358, and 402, Nos. 279, 280, 281, 282, 400, and there is due and unpaid upon said bonds twelve semi-annual installments of interest.

Your orator Austin Myers is the *bona fide* owner and holder of the following-numbered bonds for the sums set to said numbers: 169, for $1,000; No. 91, for $1,000; No. 92, for 1,000; No. 93, for
488 $1,000; No. 94, for $1,000; No. 95, for $1,000; No. 96, for $1,000; No. 276, for $1,000; Nos. 97, for $1,000; 98, for $1,000; 99, for $1,000; 100, for $1,000; bonds numbered from 152 to 174, inclusive, of $1,000 each; also bonds numbered from 221 to 250, inclusive, for $1,000 each, on which bonds there is now due and unpaid twelve semi-annual installments of interest.

Your orator Joseph W. Ward is the further owner and *bona fide* holder of the following bonds for one thousand dollars each, to wit: Numbered 386, 359, 268, 409, 130, 388, 395, 397, 405, 323, 436, 408, 59, 390, 396, 404, 406, 407, and 56, and bonds for $500 each, numbered 368, 366, 364, 362, 360, 358, 253, 43, 369, 365, 363, 361, 359; No. 19, No. 251, 355, 230, 93, and No. 267, for one thousand dollars; that there is now due and unpaid twelve semi-annual installments of inter-st on each of said bonds; that there is now due a large amount of interest upon the coupons or interest warrants attached to each of the bonds held by your orators, and demand has been made for the payment of said interest.

And your orators would further show that *with* the said railroad company *now* said county of Wayne, or any person for them, have made or propose to make any provision fer the payment of the interest due upon said bonds or any part thereof, either at the place appointed in said bonds for the payment thereof or at any other place; but, on the contrary thereof, have made default, by which default the conditions in each of the said indentures have become forfeited and absolute in said trustee or his successors in said trust

for the benefit of your orators & all others having and being the *bona fide* owners of said bonds.

And your orators show that the moneys & considerations paid in the purchase of said bonds from said trustee and said company was to aid said railroad in its construction and maintenance; that your orators are informed that the whole amount of said bonds first above set forth have been sold by said trustee & railroad company, but your orators are ignorant and do not know to whom said bonds were originally sold or who are the present holders thereof; but your orators pray that any party or parties, being holders and owners of any of said bonds, may be permitted to be made
489 parties complainants in this bill upon such terms as to this court shall be just and equitable, and upon a proper application to this court for that purpose, & that when so made parties they have such relief as shall be equitable in the premises.

And your orators further show that on or about the — day of ——, A. D. 186– (the precise time is unknown to your orators), the said Isaac Seymour, the trustee named in said deeds or mortgages, departed this life; that said Isaac Seymour, as trustee in said indenture, failed and neglected to perform all or any part of the trusts created by said deeds, and did not pay to your orators, by the execution of his trust or in any other way, any of the bonds aforesaid or any part of the interest due and unpaid thereon, but neglected so to do; nor has the said county of Wayne or any person there for them paid any part of said bonds or the interest due and unpaid thereon.

Your orators further show unto this court that by the death of the said trustee the trust created by said indenture has — incapable of execution without the aid of the court in the premises.

Now, therefore, as your orators are remindedless [remediless] at and by the strict rules of common law and can only have the proper relief in a court of equity, your orators ask that this court would take cognizance of the bill, and that the board of supervisors of Wayne county and the said Mount Vernon Railroad Company be made parties defendants in this bill, and that a subpœna in chancery be issued out of this court directed to said defendants, & that they be required to answer all and singular the allegations of this bill, according to the rules and practice of this court, and that they be specifically required to set forth and disclose a full and true account of whatever may have been done under the said indenture, and that an account may be taken of what may be due your orators upon the coupons or interest warrants aforesaid; that some proper and competent person be appointed to act as trustee in the performance of the trust created by said indenture, to exercise the same authority and power as said Seymour might have excercised
490 under said indentures in the performance and execution of the trust in said indentures mentioned, and that he be compelled to execute said trust under the authority and order of the *of the* court; or if it shall appear that your orators are entitled to a decree foreclosing said mortgage or deeds of trust and are entitled to relief by a direct order for the sale of said lands mentioned in said

indenture executed by the said county court of the county of Wayne & a sale of the property and franchises set forth and described in said indenture executed by said Mount Vernon Railroad Company, that such sale be ordered and decreed, or that your orators may have such other and further relief as may seem to *to* your honor just and equitable in the premises; and your orators bring this bill in behalf of themselves and all other *bona fide* holders of any of the bonds issued as aforesaid and described in said indenture who may in proper terms avail themselves of the decree made in this court.

HAY & WELDON,
Sol'rs for Comp'ts.

(Indorsed:) Filed Oct 1st, 1866. P. P. Enos, clerk.

491 Afterwards, to wit, on the seventh day of December, in the year last aforesaid (1870), came again said defendants, by their said solicitors, and filed in said clerk's office their answer to complainants' bill of complaint; which said answer is in the words and figures *and* following, to wit:

3.

Answer of County of Wayne, Filed Dec. 7, 1870, in Kennicott Case.

Answer of board of supervisors of Wayne Co.

The answer of the board of supervisors of Wayne county, Illinois, to a bill exhibited in the circuit court of the United States for the southern district of Illinois, in which said bill John W. Kennecott, Thomas Upham, Ebenezer W. Stone, Joseph Ward, and Austin Myer are complainants, John H. Brown, Cyrus Wakefield, Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Woodard, Joseph Burnett, and William L. Rolston, and in which your respondents and the Mt. Vernon Railroad Company are defendents.

Your respondents, for answer to so much of said bill as they are advised it is necessary for them to answer, say that they have no personal knowledge in relation to the passage of an act by the Legislature of the State of Illinois creating or providing for the creation of Mt. Vernon Railroad Company, nor as to the organization of said company, nor as to the issuing of bonds and the making of a mortgage by said company to secure the payment of said bonds, as said facts are alleged in said bill, but they have very little doubt from general information as to the truth of said several facts alleged, but for greater certainty they call upon said complainants for strict proof — each and all of said allegations, and especially do they protest aga-nst the right of the said railroad company to commit or affect the rights or interests of Wayne county in and to the swamp lands in said bill refer-ed to by anything said or done by said railroad company in said bonds or mortgage.

492 Your respondents, further answering, say that they believe the said complain-ts in their bill have truly and in effect set forth the provisions of section- 7, 8, and 9 of the said act of the Legislature of the State of Illinois, entitled "An act to incorporate the Mt. Vernon Railroad Company," approved Feb'y 15, 1855, but for greater certainty they refer to said three sections of said act, which they pray may be taken as a part of this their answer.

Your respondents, further answering, say at the time of making the mortgage set forth in said bill, and purporting to be the mortgage of Samuel J. R. Wilson, county judge, and Thomas M. Scott, as the county court of Wayne county, and bearing date the 20th day of April, A. D. 1859, the said Mount Vernon railroad was not located, did not run, and there was no authority nor right to locate or run it through the said county of Wayne.

They further deny that at that time there was any other railroad running through said county of Wayne with which said Mount Vernon railroad was joined, connected, or intersected; that said Mount Vernon railroad did not then connect with any railroad in said county of Wayne.

They expressly deny that said Mount Vernon railroad was ever consolidated with any railroad running through said county of Wayne.

They deny that it was ever consolidated with the Belleville and Fairfield railroad.

They deny that the Belleville and *and* Fairfield Railroad Company was ever organized or that any route for their railroad was ever selected by said company, as provided in their act of incorporation.

493 Your respondents, further answering, deny that the county court of Wayne county ever subscribed for any stock in said Mt. Vernon Railroad Company or authorized any person to do so for them.

They deny that at any regular or special term thereof said county court ordered a special election to be held for the purpose of taking the sense of the qualified voters of said county of Wayne in relation to disposing of the swamp and overflowed land of Wayne county to aid in the construction of said Mt. Vernon railroad.

They deny that the county court of said county of Wayne, before the execution of said mortgage or since, presented a proposition or propositions of the mode or modes, one or more, containing a brief, clear, and distinct idea of the plan or plans proposed by them for aiding in construction of said Mt. Vernon railroad or printed any such proposition as an election ticket that the voters of said county of Wayne might express their will at large on said proposition by writing "yea" or "nay" on said ticket.

They deny that said county court of Wayne county ever at any time prepared and submitted to the qualified voters of Wayne county any distinct idea of any plan or plans for aiding in the construction of said Mt. Vernon railroad, as required by the letter or spirit of said sections 7, 8, and 9 of said act of the Legislature.

They deny further that the county of Wayne ever executed or

authorized any person to execute said mortgage which is sought to be enforced by said complainants against said county by said bill.

They deny that the county court of Wayne county ever executed any such mortgage, or, if they did, that they had any authority to do so from the qualified voters of said county.

494 They deny that said exhibit claimed in said bill as the mortgage of Wayne county purports or professes to be the act of Wayne county or of the county court of Wayne county, but is only the act of the said Samuel J. R. Wilson and Thomas M. Scott.

These respondents further charge that said complainants well knew at the time they took the bonds that there was no railroad running through the said county of Wayne with which said Mt. Vernon railroad joined, connected, or intersected; in fact, that said Mt. Vernon railroad joined no railroad running through or even partly through said county of Wayne. They well knew that the county court of Wayne county had never submitted to the voters of Wayne county for their *asserting* proposition for a plan to aid in the construction of said Mt. Vernon railroad, as required by said sections. They well knew that the county of Wayne had never executed or authorized the execution of said mortgage; that the county court of said county of Wayne had never executed said mortgage, and in a general way were well informed and had notice that every material fact was wanting authorizing or justifying the county court of Wayne county in conveying or mortgaging said swamp and overflowed lands, in pursuance of the provisions of said sections 7, 8, and 9. They well knew that there was no law of the State of Illinois authorizing the county court to mortgage or convey the swamp lands; that although said sections might under the contemplated circumstances provide for conveying or mortgaging, yet such deed or mortgage could only under the law be executed by the clerk of the county court under the seal of the county.

These respondents deny expressly and specially that at the time of the passage of the act providing for the construction of the Mt. Vernon railroad, to wit, on the 15 Feb'y, 1855, *that* there was a line of railroad laid out and established in and through said county of Wayne by the Belleville and Fairfield Railroad Company,—

495 was organized with all necessary and proper officers, as required by their charter.

They deny that on the 30th day of April, 1855, or any other time *that* the board of directors of said two companies and their secretaries met at the office of the Mt. Vernon Railroad Company, in the town of Mt. Vernon, or elsewhere, and by a mutual agreement of the said two railroad companies and by virtue of the law of the State of Illinois joined, connected, intersected, and consolidated said two railroads, and that no such meeting or agreement was then or at any other time done, had, or made, either in spirit, letter, or effect, so as to consolidate them into one, or in anywise to join, connect, or intersect them; that no board was ever elected or organized of a new road made out of two and with the name as stated in said bill. They specifically deny that any such joinder, connection, or inter-

section of said roads was ever made so as to justify or authorize the county court of said county of Wayne to execute said mortgage or to make that or any other disposition of said swamp lands.

They deny that before the pretended execution of said mortgage the county court of Wayne county, at any term of said court held at the court-house, in the county of Wayne, for that purpose by the judges thereof, did order and dispose of the swamp and overflowed lands, the property of said county, or order and decree that the county court of Wayne county execute and deliver to said Mt. Vernon railroad a mortgage and deed of trust of said lands as security for the payment of said bonds or to aid in the construction and maintainance of said railroad.

They deny that said county court, on the 28th day of Sept., 1855, ordered a special election, taking the sense of the legal voters of Wayne county upon the mortgaging the swamp and overflowed lands in said county for the purpose of aiding in the construction and maintainance of the said Mt. Vernon railroad in pursuance of said sections 7, 8, and 9, as alleged in said bill, or that they did propose a plan, as stated in said bill, of any distinct idea of a
496 plan for aiding in the construction of said road, or that any election was held to vote upon such plan submitted in pursuance of said act, or that there was any vote or majority at said election for any such plan as is stated in such bill.

These respondents submit herewith a copy of the order of said court referred to in said bill, which order they make a part of this their answer, and they charge that said order did not propose a distinct idea of a plan to aid in the construction of said railroad or any other specified railroad, but was only to test the sense of the voters of said county whether they would devote the swamp land to building railroads or some other purpose. It was only intended to settle a question as to a general feeling, and not to propose any specific plan or idea for the construction of any particular road or roads.

These respondents again specifically deny that the county court of Wayne county by said proceedings became authorized to make said mortgage or any other, or that in consequence thereof they determined to do so.

They deny that the county of Wayne or the county court of said county ever in open court executed said mortgage or authorized any person to execute said mortgage. They deny that the official seal of said county was ever affixed to said mortgage; that the said Samuel J. R. Wilson and Thomas M. Scott may have executed said mortgage, but they had no authority to do so, and that their act is null and void as to said county; and they deny that by said mortgage said swamp land was donated, granted, bargained, sold, remised, released, conveyed, and confirmed to said Seymour for any such trusts as were set forth in said bill.

These respondents do not know whether or not said Mt. Vernon Railroad Company laid out their line of road to Ashley and acquired the right of way or not, as is alledged in said bill, or whether, after the execution of said mortgage, bonds were issued and
497 sold, as therein alledged, or whether said complainants pur-

chased of said bonds, as alledged in said bill, but they call upon complainants for strict proof of all said facts.

They deny that any part of said railroad has ever been built, but, on the contrary, has been entirely abandoned, and the county of Wayne received no consideration whatever for said mortgage. It is true, as stated, said county has failed and still fails to pay or provide for the payment of the interest upon any and all of said bonds, not believing said county to be under any legal obligation to do so.

Respondents further state that all of the allegations in complainants' bill not especially answered or avoid-d are hereby positively denied; and now, having fully answer-d all they are advised is necessary and proper should be answered, ask to be discharged hence with their reasonable costs.

BOARD OF SUPERVISORS OF
WAYNE COUNTY, ILLINOIS.

Attest:
[L. S.] OLIVER HOLMES, *County Clerk.*

(Indorsed:) Filed December 7, 1870. J. A. Jones, clerk.

498 Then afterwards, to wit, on the second day of January, in the January term of said court, in the year of our Lord one thousand eight hunderd and seventy-one, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

4.

Decree in Kennicott Case. Entered Jan'y 2, 1871.

Order of court.

JOHN W. KENNICOTT, JOSEPH W. WARD, ANDREW H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earl, John W. Dixwell, Joseph Smith, J. Sargeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, William R. Hodges
vs.
THE BOARD OF SUPERVISORS OF WAYNE COUNTY and THE MOUNT VERNON RAILROAD COMPANY. } In Chancery.

This day again came the parties, by their counsel, and submit this cause to the court on pleadings and proofs and the production in evidence of the bonds and interest warrants described in this bill of complaint. The court having heard the same and the argument of counsel hereon and being now sufficiently advised in the premises, it is ordered and decreed by the court that the complainants' bill be dismissed with costs, on the ground that the proofs fail to show that at the date of the mortgage and deed of trust in question there was any line of railroad constructed or authorized to

be constructed through Wayne county, with which the Mt. Vernon railroad was joined, connected, or intersected; and thereupon
499 the complainants pray an appeal to the Supreme Court, which is allowed on one or more of them entering into bond to the defendants in the penalty of three thousand dollars, with one or more sureties to be approved by the court and conditioned as the law directs, and they having perfected their appeal by the production of a bond, approved by the court, it is therefore ordered by the court that the clerk of this court certify the record of the proceedings in this cause into the Supreme Court of the United States.

And it is further ordered by the court that the injunction heretofore ordered in this cause continue in force during the pendency of the appeal and until the further order of this court.

It is therefore ordered and decreed that the defendants receive of the complainants the costs and charges by them about their defence in this behalf expended, and that execution issue therefor as in judgment at law.

500 Afterwards, to wit, on the twenty-fifth day of said June, in the term and year last aforesaid (1874), the following further proceedings were had in said court in said cause and entered of record, to wit:

5.

Decree in Kennicott Case. Entered June 25th, 1874.

Decree.

United States Circuit Court, Southern District of Illinois. In Chancery.

JOHN W. KENNICOTT, JOSEPH W. WARD, ANDREW H. Ward, Ebenezer W. Stone, and Catherine Earland, Abraham Ricker, Executors of Morris J. Earle, Dec'd; Francis E. Parker & William B. Bacon, Administrator; Eliza A. Makepeace, Adm'r of Cyrus Wakefield, Dec'd; J. Sargent Smith, Maria Myers, Administratrix of Austin Myers, Dec'd; Thomas Upham, Executor of Wm. P. Emerson, Dec'd; John H. Brown, Henry V. Davis, William R. Hodges, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L. Rolston

vs.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois, Impl'd with The Mt. Vernon Railroad Company.

} In Chancery.

This cause coming on to be heard upon the equity reserved and upon the reports of John A. Jones, Esq., the master of this court, to whom it was refer-ed by the interlocutory decree in this cause to compute and ascertain the amount due to the several complainants

as bondholders in this cause, together with other matters in said interlocutory decree contained, and upon the exceptions filed to said report, and the said court, having heard all the parties in in-
501 terest upon the evidence taken in said cause and the matters contained in said report, doth now order, adjudge, and decree that the said master's report be confirmed in respect to the parties hereinafter named—that is to say, this court doth order, adjudge, and decree that there is due upon the bonds and interest coupons secured by the mortgage and trust deed in the interlocutory decree in this cause mentioned to the respective parties complainant and to those who have come in and taken the benefit of said interlocutory decree under the order of this court the following sums, respectively, viz: To Maria Myers, administratrix of Austin Myers, deceased, one hundred and fifty thousand eight hundred sixty-three and sixty-five cents (150,863.65); Francis E. Parker, William B. Bacon, and Elma A. Makepeace, administrators of Cyrus Wakefield, deceased, one hundred and nineteen thousand nine hundred and seventy dollars and sixty-two cents (119,970.62); John H. Brown, sixty thousand nine hundred and eighty-six dollars and sixty-six cents (60,986.66); Catherine Earle and Abraham Riker, executors of Morris J. Earle, deceased, twenty-one thousand eight hundred and ninety dollars (21,890.00); Joseph W. Ward, ninety-eight thousand six hundred and thirty-two dollars and forty-one cents ($98,631.41); Thomas Upham, executor of William P. Emerson, eighteen thousand two hundred and ninety-one dollars and forty cents ($18,291.40); John J. Dixwell, nine thousand three hundred and forty-nine dollars and twenty-two cents (9,349.22); J. Smith, eight thousand nine hundred and fifty-three dollars and twenty cents ($8,953.20); W. R. Rolston, six thousand eight hundred and seventy-eight dollars and thirty-five cents (6,878.35); John W. Kennicott, six thousand nine hundred and forty dollars and sixty-five cents ($6,940.65); Andrew H. Ward, eight thousand and sixteen dollars and eighty-one cents (8,016.81); J. Burnett, four thousand six hundred and twenty-seven and ten cents (4,627.10); William C. Plunckett, four thousand five hundred sixty-four dollars and eighty cents ($4,564.80); J. L. Priest, one thousand one hundred and fifty-six dollars and seventy-seven cents ($1,156.77);
502 E. W. Stone, one thousand one hundred and fifty-six dollars and seventy-seven cents ($1,156.77); J. Sargent Smith, one thousand and nin-ty-five dollars ($1,095.00); A. F. Gould, six hundred and eighty-one dollars and twenty-six cents ($681.26); H. V. Davis, one thousand and ninety-five dollars ($1,095.00); William P. Hodges, one hundred and eighty-five thousand six hundred and forty-four dollars and ninety-two cents (185,644.92); Isaac Taylor, twenty-nine thousand six hundred and seventy-nine dollars and seven cents (29,679.07); Ransom, Geer & Co., twenty-seven thousand three hundred and eighteen dollars and seventy-five cents (27,318.75); Wed W. Clark, twenty-one thousand five hundred and eighty-five dollars and thirty cents (21,585.30); McMartin and Alexander, administrators of Peter McMartin, deceased, twelve thousand six hundred and thirty-one dollars and seven cents

($12,631.07); Nathaniel H. Streeter, seven thousand one hundred and thirty dollars and seventy cents ($7,130.70); Amadown, Lane & Co., two thousand three hundred and seventy-six dollars and ninety cents ($2,376.90); N. H. Holden, one thousand one hundred and eighty-eight dollars and forty-five cents ($1,188.45); Roxanna Crego, one thousand one hundred and twenty-five dollars and sixty-two cents ($1,125.62); Herman Powers, one thousand and ninety-five dollars ($1,095.00); Glenn and Sprayberry, twenty-five thousand four hundred and forty-nine dollars and five cents ($25,449.05); J. L. Bleakley, nine thousand three hundred and eighty dollars and ninety cents ($9,380.90); H. Futter, four thousand six hundred and ninety dollars and forty-five cents ($4,690.45); Hosa Birdsall, sixty-four thousand six hundred and ninety-seven dollars and twenty cents ($64,697.20); Lucius F. Reed, twenty-six thousand eight hundred and ninety-two dollars and eighty-five cents ($26,892.85); Clark L. Potter, seventy-six thousand eight hundred and nine dollars and twenty-five cents ($76,809.25); Joseph Waxelbaum, two thousand three hundred and thirteen dollars and fifty-five cents ($2,313.55); James O. Faircloth, twenty thousand four hun-
503 dred and fifty-four dollars and twenty-seven cents ($20,454.27); Caleb Underhill, seven thousand and four dollars ($7,004.00); James S. Hendrickson, eleven thousand eight hundred and twenty-one dollars and fifteen cents ($11,821.15); Oliver D. Taylor, seventeen thousand five hundred and forty-two dollars and thirty-six cents ($17,542.36); Benjamin Wise, twelve thousand and ninety-on-dollars and thirty-five cents ($12,091.35); James F. Hendrickson, fourteen thousand two hundred and sixty-one dollars and forty cents ($14,261.40); Thompson E. F. Randolph, eleven thousand eight hundred and eighty-four dollars and fifty cents ($11,884.50), and William C. Potter, one thousand nine hundred and twenty-five dollars ($1,925.00); and it is further ordered, adjudged, and decreed and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree that all and singular the lands and premises in the said trust deed and mortgage in the said interlocutory decree in this cause mentioned and described, or so much thereof as may be necessary to raise the amount so due to the said respective parties, with interest from the first day of May, 1874, together with the costs of this suit unpaid and the expenses and fees of sale, be sold for cash in hand at public auction, seperately in parcels of not more than one hundred and sixty (160) acres each, by John A. Jones, master in chancery of this court, at the front door of the court-house, in Fairfield, Wayne county, Illinois, between the hours of nine in the morning and the setting of the sun on the day named, and from day to day on adjournment fixed thereafter; that the said master give public notice according to law of the time and place of such sale by previously publishing the same for the space of four successive weeks in a public newspaper published in said county of Wayne; that the said matter, on the sale of said mortgaged premises, execute cer-
tificates of purchase to the purchasers thereof, which cer-
504 tificates shall specify the lands purchased and the sum paid therefor and the time when the purchaser will be

entitled to a deed for such lands, unless the same shall be redeemed according to the statutes of the State of Illinois, and the said master shall file a duplicate of every such certificate issued by him. The said master is directed (on coming in and confirmation of his report of sale), out of the proceeds of said sale, to retain his disbursements and commissions on said sale, and that he pay in to the clerk of this court the taxable costs of the complainants in this suit for the benefit of the parties entitled thereto, and that out of the remainder of said proceeds the said master pay to each of said complainants and the said parties and persons aforesaid the said amount as reported by the said master and above decreed as due to each, with interest from the first day of May, 1874, or, if said remainder shall be insufficient to pay the whole in full, such percentage of the same as the amount due shall bear to the whole sum to be distributed in proportion; and that in case said premises should sell for more than sufficient to pay the said expenses of sale, taxable costs, and principal and interest, then that said master, after making payment as aforesaid, bring such surplus money into court, without delay, to abide the further order thereof; and it is further ordered, adjudged, and decreed that the said defendants and the county of Wayne, their successors, and all persons claiming under them as purchasers or grantees *pendente lite* since the commencement of this suit be forever barred and foreclosed by this decree from all equity of redemption of, in, and to said mortgaged premises and any part and parcel thereof, unless redeemed as aforesaid, and that if said premises are not redeemed as aforesaid, according to the laws of Illinois, said master execute deeds therefor; and it is further ordered, adjudged, and decreed that upon the execution and delivery of the conveyances aforesaid the said purchaser or purchasers,
505 his or their representatives or assigns, be let into possession of said mortgaged premises, and that any of the said defendants, The County of Wayne or The Mt. Vernon Railroad Company, or purchasers *pendent- lite* under either of them, who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, has come into possession under them or either of them, on the production of the said master's deed of conveyance of said premises, under the sale thereby and herein authorized, surrender possession thereof *of* such purchaser or purchasers, their representatives or assigns, or on refusal so to do be considered in contempt of this court; and it is further ordered that the said master make report of his proceedings in the premises with all convenient speed. The particular description and location of the lands and premises in said mortgage and trust deed mentioned and by this decree ordered to be sold is as follows, to wit: The lands situate in the county of Wayne, in the State of Illinois, particularly described as follows, viz:

(Here follows description of lands mentioned in mortgage and trust deed, which by agreement is here omitted).

506 6.

Trust Deed of County of Wayne to Isaac Seymour.

County Court
to
Isaac Seymour.

This indenture, made this twentieth day of April, one thousand eight hundred and fifty-nine, between Samuel J. R. Wilson, judge, and Thomas M. Scott, associate judge, of the county court of the county of Wayne and State of Illinois, parties of the first part, and Isaac Seymour, of the city of New York, banker, trustee, as hereinafter mentioned, party of the second part, witnesseth:

The [that] whereas the Congress of the United States duly passed an act approved September the twenty-eighth, one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for all the swamp and overflown lands within its limits, to be selected under the direction of the commissioners of the land office;

507 And whereas the Legislature of the said State of Illinois passed an act approved by the Gove-nor of said State on the twenty-second day of January, one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands and to pay the expenses of selecting and surveying the same;" which said act authorized the appropriation and disposal of said lands for such purposes as may be deemed expedient by the courts or county judges;

And whereas the Legislature of said State of Illinois passed an act approved by the Gove-nor of said State on the fifteenth day of February, one thousand eight hundred and fifty-five, entitled "An act to incorporate the Mount Vernon Railroad Company," whereby all such persons or corporations as should become stockholders under the provisions of the said act and their successors were duly incorporated into a body politic and corporate under the name of the Mount Vernon Railroad Company, and the parties of the first part were duly authorized and empowered to make such disposition of the swamp and overflowed lands within said county of Wayne

508 in aid of the construction and maintenance of the said railroad as they may deem best for the public interest of said county;

And whereas at a special term of the said county court of the county of Wayne, held on the twenty-eighth day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the said court whereby a special election was ordered and directed to be held on the fifth day of November, one thousand eight hundred and fifty-five, for the purpose of taking the sense of the qualified voters of the county upon the mortgaging that portion of the overflowed and swamp lands hereinafter described for the purpose of aiding in the construction and maintenance of the

said The Mount Vernon railroad; and the said county court did then and there order public notice of such special election to be given by advertisements, in accordance with the statute laws of said State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did propose a proposition containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road, and did cause the said proposition to be printed
509 at large as an election ticket and furnished to the qualified voters of said county to be used at such election in the words and figures following, to wit, "For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through Wayne county;" "Against the same;"

And the said special election was duly held, pursuant to said notice, on the said fifth day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions of said charter and the laws of the said State of Illinois, and the returns thereof made, canvassed, and published in all respects as other county elections are required to be in and by said laws;

And whereas the said proposition or plan above stated received the highest number of votes and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea" upon the said several printed propositions or tickets cast by them at the said election;

510 And whereas, upon the returns of the said special election being duly made, canvassed, and published as aforesaid, the said county court of the county of Wayne did adopt the proposition or plan having the highest number of votes as aforesaid, and did order, adjudge, and determine to execute a mortgage in conformity to such proposition or plan and to the provisions of this instrument to the parties of the second part as trustee upon the hereinafter-described — for the purpose of aiding in the construction and maintenance of the said The Mount Vernon railroad; which said order was duly made in open court on the twentieth day of April, one thousand eight hundred and fifty-nine;

And whereas by virtue of the said several acts and proceedings the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maintenance of the railroad of the said The Mount Vernon Railroad Company, and the said parties deem it best for the public interest of said county
511 of Wayne that the lands hereinafter described should be conveyed to the party of the second part, trustee, and commissioner duly appointed and selected by both the said parties of the first part and the said The Mount Vernon Railroad Company upon the terms and conditions hereinafter particularly set forth:

Know, this indenture witnesseth that the said parties of the first part, in consideration of the premises and of one dollar to them in hand severally paid by said parties of the second part at or before

the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, remise, release, enfeoff, convey, and confirm, unto the parties of the second part and the survivor and survivors of them and the heirs and assigns of such survivors forever all and singular the lands and premises situate, lying, and being in the county of Wayne and State of Illinois bounded and described as follows—

that is to say—

512 Northeast quarter, southwest quarter, southeast of northwest quarter, all in section 3; west half of northeast quarter, southeast of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter, and southeast of southwest quarter, all in section 4; southeast quarter, north half of southeast quarter, west half of southwest quarter, southeast of southwest, of section five; north half of northwest quarter, west half northeast quarter, southwest of northeast, northeast of southeast, of section eight; west half of northeast quarter, northwest quarter, northeast of southwest, east half of northeast quarter, northwest of southwest quarter, southeast quarter, of section 9; southwest of northeast, west half *west half* of southeast, of section 10; west half of northeast quarter, west half and southeast quarter of section 15; northeast of southwest quarter, north half, east half of southeast, northwest of southeast quarter, of section 22; southwest of northwest quarter, southwest of southwest quarter, of section 23; east half of southeast, west half of southwest, northwest of southeast quarter, of section 25; southeast of northwest quarter, northwest of northwest quarter, east half of southwest quarter, and southeast quarter, of section

513 26; west half of southwest quarter, southeast of southwest quarter, of section thirty-one; east half of northeast quarter, northwest of northeast quarter, southeast quarter, northeast of southwest quarter, northeast of northwest quarter, and west half of northwest quarter, of section 35; northwest of northwest quarter, half of southwest, northeast of northeast quarter, of section 36, all of township one south, of range five east.

South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter, of section one; northwest of northeast quarter, south half of northeast quarter, south half of northwest quarter, of section 2; east half of northwest quarter, northwest of southeast quarter, southeast of northwest, of section five; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter, of section 7; southeast of northeast quarter, southwest of northwest quarter, southeast of northeast quarter, and south half, of section 8; southeast of northeast quarter, southeast quarter, of section 10; all of section 11; southeast of northwest quarter, northeast of northwest quarter, southeast of northwest quarter, west half of

514 northwest quarter, southwest quarter, east half of southeast quarter, west half of southeast quarter, of section 12; north half of northeast quarter, southwest of northeast quarter, west half and southeast quarter, of section 13; all of section 14; east half

southwest quarter, south half of northwest quarter, of section 15; all of section 17; northwest of northeast quarter of section 18; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter, of section 19; all of section 20; east half west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter, of section 21; north half northeast of southwest quarter, west half of southwest quarter, east half of southeast quarter, of section 22; all of section 23; all of section 24; all of section 25; east half of northeast quarter, northwest of northeast quarter, east half of southeast quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter, of section 26; northeast quarter, southwest of southeast quarter, west half of *north of* north-
515 west quarter, of section 27; all of section 28; all of section 29; southwest of southwest quarter, east half of northeast quarter, east half of southeast quarter, of section 30; northeast quarter, south half of southwest quarter, of section 31; northeast quarter of southeast of southwest quarter, northwest of southwest quarter, northeast of southwest quarter, west half of northwest quarter, of section 32; east half northwest quarter, east half southwest quarter, northwest of southwest quarter, southwest of the southwest quarter, of section 33; all of section 34; all of section 35; all of section 36, town. two south, of range six east; all of section one; all of section 2; east half northwest quarter, east half southwest quarter, northwest of southwest quarter, of section 3; southeast quarter, northeast of southeast quarter, west half of southeast quarter, east half of northwest quarter, of section 4; east half of southeast quarter, northeast quarter, west half of southeast quarter, of section 6; north half southeast quarter, north half southwest quarter, southeast of southwest quarter, of section 7; northeast quarter, southeast of northwest quarter, east half of southeast quarter, northwest of southeast quarter,
516 of section 10; southeast quarter, west half, northwest southeast quarter, of section 11; north half north half of southwest quarter, southeast of southwest quarter, north half of southeast quarter, southwest of southeast quarter, of section 12; northeast of northwest quarter, west half of northwest quarter, of section 14; northeast quarter, east half of northwest quarter, northwest of southeast quarter, east half of southwest quarter, of section 18, of township three south, six east; west half of northeast quarter, west half of southeast quarter, southeast of southeast quarter, of section 2; all of section 3; all of section 4; all of section 5; all of section 6; all of section 7; all of section 8; all of section 9; all of section 10; all of section 11; southwest of northwest quarter, south half of section 12; all of section 13; all of section 14; all of section 15; all of section 17; east half east half of northwest quarter of section 18, of township three south, range seven east; southwest of southwest quarter, southeast of southwest quarter, of section one; west half of
517 northeast quarter northwest quarter, south half, of section 2; northeast northeast of southeast quarter of section 3; northeast of northwest quarter, north half, of section 4; north half west half of southwest quarter, northwest of southeast quarter, of section

5; northeast of the northwest quarter, north half of northeast quarter, of section 7; northeast of northwest quarter, half of northwest quarter, of section 8; east half of section 11; all of section 12; northeast quarter, south south half of southwest quarter, east half of southeast quarter, southwest of southeast quarter, northwest of southwest quarter, southwest of southeast quarter, of section 13; northwest of northwest quarter of section 23; northwest quarter, northeast of southwest quarter, of section 24, of township one south, range eight east; half northwest quarter, southwest of northwest quarter, west half of southwest quarter, of section 6; southeast of northwest quarter, west half of northwest quarter, northeast of southwest quarter, west half southwest quarter, west half of southeast quarter, of section 7; southeast of southwest quarter, southwest of
southwest quarter, of section 8; northeast of northwest quarter,
518 half of northwest quarter, west half of southwest quarter, of
section 17, of township three south, of range eight E.; southwest quarter, west half of southeast quarter, southeast of southeast quarter, of section one; south half of section 2; southeast quarter, southeast of southwest quarter, of section 3; west half of southeast quarter of section 6; the southeast of northeast quarter, west half of northeast quarter, west half of southeast quarter, of section 7; west half of northwest quarter of section 8; east half southwest quarter, northeast northwest quarter, of section 10; all of section 11; north half, west half of southwest quarter, northwest of southeast quarter, of section 12; southwest of southwest quarter, east half of southwest quarter, southwest of southeast quarter, of section 13; all of section 14; east half of southeast quarter, southwest of southeast quarter, of section 15; west half of northwest quarter, south half of section 17; all of section 18; north half southeast quarter of section 19; all of section 20; west half of northeast quarter, southeast of northeast
quarter, west half of southeast quarter, of section 21; east half
519 south half of northwest quarter, northwest quarter, of section
22; northeast quarter, west half east half southeast quarter, southwest of southeast qr., of section 23; west half of northeast quarter, west half west half of southeast quarter, northwest quarter, north half of southwest quarter, west half of northeast quarter, of section 25; all of section 26; all of section 27; all of section 28; west half of northeast quarter, southeast of northeast quarter, west half of southeast quarter, of section 29; north half of northeast quarter of section 30; all of section 32; north half west half of southwest quarter, northwest of southeast quarter, of section 33; northeast quarter, northeast of northwest quarter, west half of northwest quarter, east half of the southeast quarter, of section 34; west half of northwest quarter, northwest of southwest quarter, east half of southwest quarter, of section 35; south half of southwest of northeast quarter, southeast of northeast quarter, of section 36, of town. one south, range nine east; west half of northeast quarter, northeast of northeast quarter, northwes- quarter, of
section one; all of section 2; northwest quarter, east
520 half of northeast quarter, southeast of southwest quarter,
southwest of southeast quarter, east half of southeast quarter,

of section 3; east half of northeast quarter, southwest of northeast quarter, west half west half of southeast quarter, northeast of southeast, of section 4; east half of section 5; southwest of southwest quarter of section 8; west half of northwest quarter of section 9; east half of northeast quarter, southwest of northeast quarter, northwest quarter, east half of southwest quarter, southeast quarter, of section 10; northeast quarter, west half, of section 11; west half of northwest quarter, northeast of northwest quarter, *northeast of northwest quarter*, west half of southwest quarter, southeast northwest quarter, of section 12; northeast of northwest quarter, northwest of northwest quarter, of section 13; northeast of northeast quarter, northwest of northeast quarter, north half of northwest quarter, of section 14; northeast quarter, west half, of section 15; west half of northeast quarter, northeast of northwest quarter, southeast of southeast quarter, of section 17; east half northeast quarter, east
521 half southeast quarter, of section 20; northeast quarter, west half, of section 21; northeast of northwest quarter, west half of northwest quarter, of section 22; southeast of southwest quarter of section 26; west half of southwest quarter, southeast of southwest quarter, of section 27; south half of northeast quarter, west half of southeast quarter, of section 28; east half of southwest quarter *east half of the southwest quarter* of section 29; southeast of southwest quarter, west half of southwest quarter, southwest of northwest quarter, south half of southeast quarter, of section 30; west half of northwest quarter, southeast of northeast quarter, of section 31; east half southwest quarter, northwest quarter, north half of southwest quarter, southeast of southwest quarter, of section 32; all of section 33; all of section 34; west half of southwest quarter, southeast of southwest quarter, northeast of northwest quarter, of section 35; southwest of northeast quarter, east half of southeast quarter, of section 36, township two south, of range nine east; half northeast quarter, southwest of northeast quarter, south half of southwest
522 quarter, southeast quarter, of section one; west half of northeast quarter, southeast quarter, west half, of section 2; west half of northeast quarter, south half of southeast quarter, of section 3; east half *east half* northwest quarter, southeast of southwest quarter, of section 4; northeast of northeast quarter of section 5; east half of southwest quarter, southwest of the southeast quarter, of section 7; northeast of southwest quarter, southwest of southwest quarter, of section eight; east half of southwest one-quarter, east half east half of northwest *corner* of section 9; all of section 10; northwest quarter, east half west half of southwest quarter, of section eleven; all of section 12; all of section 13; south half of northeast quarter, west half of northwest quarter, southeast of northwest, south half, of section 14; all of section fifteen; northwest of northwest quarter of section 17; north half of northeast quarter of section eighteen, of township 3 south, of range nine east; south half of northwest
523 quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter, of section one; northwest of northeast quarter, south half of northwest quarter, south half of northwest quarter, of section two; east half of south-

west quarter, northwest of southeast quarter, southeast of northwest quarter, of section 5; northeast of southeast quarter of section 6; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter, southeast quarter, of section 7; southeast quarter of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, southwest quarter southeast quarter, of section eight; southeast of northeast quarter, south*south*-east quarter of section 10; all of section 11; northeast of northwest quarter, southeast northwest quarter, southeast of northeast quarter, west half of northwest quarter, southwest quarter, east half of southeast quarter, west half of southeast quarter, of section 12; north half of northeast quarter, southwest of northeast quarter, southeast quarter, west half, of section 13; all of section 14; east half southwest
524 quarter, south half northwest quarter, of section 15; all of section 17; northwest of northeast quarter of section 18; south half northeast quarter, east half northwest quarter, southeast of southwest quarter, southeast quarter, of section 19; all of section 20; east half west half of northwest quarter, northeast of northeast quarter, southeast of southwest quarter, of section 21; north half of northeast quarter of southwest quarter, west half southwest quarter, east half southeast quarter, of section 22; all of section 23; all of section 24; all of section 25; east half northeast quarter, northwest northeast quarter, east half northeast quarter, southwest southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter, of section 26; northeast quarter, east half southeast quarter, southwest of southeast quarter, west half of northwest quarter, southeast quarter, of section 27; all of section 28; all of section 29; southwest of southwest quarter, east half of northeast quarter, east half of southeast quarter of section 30; northeast quarter, south half of northwest quarter, of sec-
525 tion 31; northeast quarter, southeast of northwest quarter, northwest of southwest quarter, northeast of northwest quarter, west half of the northwest quarter, of section 32; east half east half southwest quarter, northwest quarter, northwest of southwest quarter, southwest southwest quarter, of section 33; all of section 33; all of section 34; all of section 35; all of section 36, of township two south, of range six east; west half of northeast quarter, west half west half of southeast quarter, southeast of southeast quarter, of section two; all of section one; all of section 3; east half of southeast quarter, southwest of southeast quarter, east half of southwest quarter, east half of northeast quarter, of section 4; east half northeast quarter, E. ½ S. W., & E. ½ S. E., northeast of northwest quarter, southwest of southeast quarter, northwest of southeast quarter, of section 9; all of section 10; all of section 11; all of section 12; all of section 13; all of section 14; east half of northeast quarter, northwest northwest quarter, north half of northwest quarter, of section 15; south half of northeast quarter of section 22; east half east
526 half of northwest quarter, northwest of northwest quarter, northeast of southeast quarter, southeast of southwest quarter, of section 23; all of section 24; all of section 25; southeast quarter, southeast of northwest quarter, southwest of southwest

quarter, southeast of southwest quarter, northeast of southwest quarter, of section 26; northeast of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half southeast quarter, of section 34; all of section 35; all of section 36, township one north, range nine east; south half east half northwest quarter, northwest of northwest quarter, east half of southwest quarter, of section 19; west half of northwest quarter, south half, of section 20; south half of southwest quarter of section 21; east half of northeast quarter, east half of southeast quarter, southwest of southeast quarter, of section 23; northeast quarter, west half, of section 24; west half, west half of southeast quarter, southeast of south E. quarter, northeast of southeast quarter, of section 25; east half of northeast quarter, E. ½ N. W. ¼, northwest of northeast quarter, of
527 section 26; southeast of northeast quarter, southeast quarter, west half, of section 28; west half of northeast quarter, northwest of northeast quarter of southeast quarter, south half of southeast quarter *south half of southeast quarter*, northwest of southwest quarter, of section 29; east half of northeast quarter, northwest of northeast quarter, northeast of southeast quarter, east half of northwest quarter, north half of southwest quarter, southwest of southeast quarter, of section 30; northwest of northwest quarter of section 31; east half northeast quarter, northwest of northeast quarter, of section 32; northwest quarter, east half northeast of southwest quarter, of section 33; north half northeast of southeast quarter, west half of southeast quarter, southwest quarter, of section 34; west half of southwest quarter, southeast of southwest quarter, of section 35; all of section thirty-six, township two north, range nine east; southwest of northwest quarter of section one; southeast of southeast of section 2; southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter, of section 11;
528 southeast of northwest quarter, west half of northeast quarter, of section 14; southeast of southeast quarter, west half southwest quarter, southeast of southwest quarter, of section 26; northwest of northwest quarter, northwest of northeast quarter, of section 35, township one north, of range five east; southwest of northwest quarter, south half of southwest quarter, of section 36, township two north, of range five east; east half lot one, northeast quarter, section six; southeast of southeast quarter of section 13; southeast of northwest quarter, south half of northeast quarter, of section 24; west half of northeast quarter, section 25; east half of northwest quarter of section 35, township one north, of range six east; southeast of southeast quarter of section 19, township two north, of range six east; east half of southeast quarter, southwest of southeast quarter, of section one; northwest of northeast quarter, east half of northeast quarter, of section 12; northwest quarter of section 19; southeast of northwest quarter, southwest of northeast quarter, west
529 half of southeast quarter, of section 21; southwest of southwest quarter of section 27; east half N. E. ¼ and south of northeast quarter of section 28; southwest of northeast quarter of section 35; southeast of northeast quarter of section 36, township one north, of range seven east; southeast of southwest quarter of

section 21; north half of southeast quarter, west half southeast quarter, of section 22; southeast of southeast quarter, southeast of southwest quarter, northwest of southwest quarter, of section 23; southwest of northwest quarter, west half southwest quarter, southeast of southwest quarter, of section 24; southwest of northwest quarter, southwest of southeast quarter, northwest of southwest, of section 25; northeast of northeast quarter, northeast of southeast quarter, of section 26; west half of northeast quarter, southeast of northeast quarter, northeast of southeast quarter, of section 36, township two north, range seven east; southeast of southeast quarter of section 5;
lot one, northwest (containing sixty-six acres), section 6;
530 northeast of southwest quarter of section 6; lot two, northwest quarter, containing fifty-two acres; southwest of northeast quarter section 7; southeast of southwest quarter, southwest of southwest quarter, of section 8; southwest quarter of section 22; southeast of southeast quarter, southwest of southwest quarter, of section 26; northwest of northwest quarter of section 27; northeast of northwest quarter, east half of northeast quarter, of section 28; all of section 34; west half of northwest quarter, southeast of northwest quarter, southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter, of section 35; northwest of northwest quarter of section 36, township one north, of range eight east; northwest of northeast quarter, northwest quarter, east half of southeast quarter, of section 31, town. two north, of range eight east; southwest of northwest quarter, east half of southwest quarter,
northwest of southwest quarter, of section 6; northeast quar-
531 ter, southwest of northwest quarter, northwest of southwest quarter, southwest of southwest quarter, east half of southeast quarter, of section 10; north half, west half of southwest quarter, southwest of southeast quarter, east half of southeast quarter, of section eleven; east half east half of northwest quarter, southwest of northwest quarter, southwest quarter, of section 12; northwest of northeast quarter, north half of northwest quarter, of section 13; northeast quarter, east half of northwest quarter, northwest of northwest quarter, of section 14; northwest of northeast quarter, northwest quarter, northeast of southwest quarter, southwest of southeast quarter, west half of southwest quarter, southeast of southwest quarter, of section 25; southwest of northwest quarter, south half, of section 28; east half of southeast quarter of section 29, township two south, of range five east, the whole containing one hundred and
three thousand eight hundred and eighteen acres, less thirty-
532 eight hundred acres pre-empted, in trust for the uses and purposes directed in said act of incorporation, in the words following—that is to say:

First. To secure and guarantee the constructing, completing, and furnishing said road and branches in the manner and time and upon the conditions in the act of incorporation of said company provided for the faithful application — all money or property arising from the sale of lands or obtained upon the faith of the same, as hereinafter authorized, to the constructing, completing, equip-ing, and fur-

nishing said road and branches in accordance with the terms of said act of incorporation.

Second. A portion of said lands so conveyed to said trustee, not exceeding one-fourth part thereof in value, to be designated by said company, shall be held by said trustee, free from all incumbrances, for purposes of sale from time to time, on the requisition of said company, for the purpose of raising funds for the payment of interest on loans in case of deficiency from other sources, and for such other expenditures as the exegencies of the business of the company
533 may require, provided that no portion of said fourth part of said lands shall be sold until said road and branches shall have been actually finished.

Third. For the purposes of raising funds from time to time for the construction and completion of said road and branches and the purchase of iron and other materials to be used thereon said company may issue its bonds, countersigned by the said trustee, in sums of not less than five hundred or more than one thousand dollars each, at rates of interest not higher than seven per centum per annum, payable semi-annually, the principal of said bonds payable in the year one thousand eight hundred seventy-four, at such place as it shall designate.

The payment of said bonds shall be secured by a mortgage of the lands, as hereinbefore provided, for which said mortgage shall be a prior lien, and shall be referred to and recited in said bonds so to be issued by said company—

It being understood and agreed that the said county court
534 shall and will make, execute, and deliver to the said trustees such proper deed, conveyance, declaration of trust, or other assurance as shall from time to time be necessary and proper, and as their counsel learned in the law shall reasonably advise, for the better carrying into effect the true object of this indenture and of securing by mortgage the payment of each and of all said construction bonds, in manner and form in such additional instrument to — lawfully and at large set forth and declared, with the same effect and certainty as if the provisions thereof had been embodied and set forth in this indenture:

To have and to hold all and singular the above granted and described premises, with the appurtenances, to the said Isaac Seymour, trustee as aforesaid, and to his successors, until all the uses and trusts hereinbefore set forth and declared shall be fully and completely accomplished, and the said trustee shall only be accountable for the exercise of reasonable diligence in the management of said trust.

In testimony whereof the said party of the first part have caused their seal to be hereto affixed and the president and
535 secretary have subscribed their names the day and year first above written.

S. J. R. WILSON, *Co. Judge.*
THOMAS M. SCOTT.

STATE OF ILLINOIS, }
Wayne County. }

I, J. W. Barnhill, county clerk in and for the county of Wayne and State of Illinois, do hereby certify S. J. R. Wilson, county judge, & Thomas M. Scott, associate judge, personally appeared before — and acknowledged that they signed the foregoing deed of trust for the purposes therein named.

[SEAL.] Given under my hand and seal of office this 20th day of April, A. D. 1859.

J. W. BARNHILL, *Clerk.*

Filed 3rd May, 1859.

R. B. SLOCUMB, *Clk.*

STATE OF ILLINOIS, }
Wayne County. }

536 I, R. B. Slocumb, circuit clerk in and for the county of Wayne and State of Illinois, do hereby certify that the above is a true and correct copy of the foregoing deed as appears from the record in my office.

[SEAL.] Given under my hand and official seal, at Fairfield, this 19th day of January, 1864.

R. B. SLOCUMB, *C'lk,*
By J. A. LINVILLE, *Deputy.*

537 Ex. 7.

Mortgage from County of Wayne to Isaac Seymour.

County Court
to
Isaac Seymour.

This indenture, made this twentieth day of April, in the year of our Lord one thousand eight hundred and *and* fifty-nine, between Samuel J. R. Wilson, judge, and Thomas M. Scott, associate judge, of the county court of the county of Wayne, in the State of Illinois, parties of the first part, and Isaac Seymour, of the city and State of New York, banker, trustee, as hereinafter mentioned, party of the second part, witnesseth :

Whereas the Congress of the United States duly passed an act, approved September the twenty-eight, one thousand eight hundred and fifty, entitled " An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and in pursuance thereof the Secretary of the Interior — the United States caused a patent to be issued to the State of Illinois for the swamp and overflowed lands within its limits, to be *situated* under the
538 direction of the commissioners of the land office ; and

Whereas the Legislature of the said State of Illinois passed an act, approved by the Gove-nor of said State on the twenty-second day of January, one thousand eight hundred and fifty-two, entitled

"An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," which said act authorized the appropriation and disposal of said lands for such purposes as may be deemed expedient by the court or county judges; and

Whereas the Legislature of the said State of Illinois passed an act, approved by the Gove-nor of said State on the fifteenth day of February, one thousand eight hundred and fifty-five, entitled "An act to incorporate the Mount Vernon Railroad Company," whereby all such persons and corporations as shall become stockholders under the provisions of the said act and their successors were duly incorporated into a body corporate and politic under the name of the Mount Vernon Railroad Company, and the parties of the first part were duly authorized and empowered to make such disposition of the swamp and overflowed lands within the said county of
539 Wayne in aid of the construction and maintenance of the said railroad as they deem best for the public interest of said county; and

Whereas at a special term of the said county court of the county of Wayne, held on the 28th day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the same court whereby a special election was ordered and directed on the fifth day of November, one thousand eight hundred and fifty-five, to be held for the purpose of taking the sense of the qualified voters of the county upon the mortgaging that portion of the said overflowed and swamp lands hereinafter described for the purpose of aiding in the construction and maintenance of the said The Mount Vernon railroad; and the said county court did then and there order public notice of such special election to be given by advertisements, in accordance with the statute laws of said State of Illinois, which said notice was given and published with the terms and provisions of said order; and the said county court did prepare a proposition containing a brief, clear, and distinct idea of the
540 plan proposed by them for aiding in constructing said road, and did cause the said proposition to be duly printed at large as an election ticket and presented to the said qualified voters of said county to be used at such election in the words and figures following, to wit, "For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through said county;" "Against the same;" and the said special election was duly held, pursuant to said notice, on the said fifth day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions of said charter and of the laws of the said State of Illinois, and the returns thereof made, canvassed, and published in all respects as other county elections are required to be in and by the said laws; and

Whereas the said proposition or plan above stated received the highest number of votes and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea"

upon the said several printed propositions or tickets cast by
541 them at the said election; and whereas, upon the returns of said special election being duly made, canvassed, and published as aforesaid, the county court of the county of Wayne did adopt the proposition or plan having the highest number of votes as aforesaid, and did order and adjudge and determine to execute a mortgage in conformity to such proposition or plan and to the provision of this instrument to the parties of the second part as trustees upon the land hereinafter described for the purpose of aiding in the construction and maintenance of the said Mount Vernon railroad, which said order was duly made in open court on the twentieth day of April, one thousand eight hundred and fifty-nine; and

Whereas by virtue of the said several acts and proceedings the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maintenance of the railroad of the said Mount Vernon Railroad Company, and the said parties deem it best for the public interest of the said county of Wayne that the lands hereinafter described should be mort-
542 gaged to the party of the second part, trustee and commissioner duly appointed and selected by both the said parties of the first part and the said The Mount Vernon Railroad Company, upon the terms and conditions particularly set forth; and

Whereas the said The Mount Vernon Railroad Company has deemed it advisable to provide for the issue and disposal, now and hereafter, of its construction bonds for the purpose of raising funds from time to time for the construction and completion of the railroad and for the equipment and the expenses of organizing and operating the same, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of such construction bonds and obligations, in the just and full sum in the aggregate of eight hundred thousand dollars, secured to be paid by their four hundred construction bonds or obligations of and for five hundred — each, and by their six hundred construction bonds or obligations of and for one thousand dollars each, to the extent of eight hundred thousand dollars in the aggregate, to bear
543 date on the first day of ——, one thousand eight hundred and fifty-nine, and be payable in fifteen years from the date thereof, which will be in the year one thousand eight hundred and seventy-four, at the Bank of North America, in the city of New York, with interest at the rate of seven per centum per annum, payable semi-annually at the Bank of North America, in said city of New York, on the first day of May and November in each year, to be secured hereby; all which bonds are to have warrants for the payments of the interest thereon attached and to be in the form following, the respective number and amounts thereof being omitted:

"The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour, or bearer, one thousand dollars, which said company hereby promises to pay on presentation of this bond hereof at the Bank of North America, in the city of New York, on the first day of May, one thousand eight hundred and seventy-four, with in-

terest thereon at the rate of seven per cent. per annum, — semi-
544 annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest warrants hereto annexed, at the said Bank of North America.

"This bond is one of a series of four hundred of five hundred dollars each and 600 of 1,000 — each, of like *term* and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and the completion of the said railroad and the expenses incident thereto. Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee for one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company.

"In witness whereof the said The Mount Vernon Railroad
545 Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and its interest warrants to be signed by its secretary, and its corporate seal to be hereto affixed, at the ——, in the State of ——, this — day of ——, one thousand eight hundred and fifty-nine."

Which said construction bonds or obligations, as previously secured by this indenture and the lands herein described and the avails thereof, are to constitute a primary fund for the payment of the principal and interest of the said bonds:

Now, therefore, this indenture witnesseth that the said parties of the first part, in consideration of the premises and of one dollar to them severally paid by the parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, remise, release in full of, convey, and confirm, to the party of the second part, his successors and the survivors of
546 them and the heirs and assigns of such survivors forever, all and singular the land and premises situate and lying and being in the county of Wayne and the State of Illinois bounded and described as follows—that is to say:

(Here follows description of property described in preceeding deed of trust, which, by agreement, is here omitted.)

The whole containing one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred acres pre-empted, together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, at law or in equity, of

the said parties of the first part of, in, and to the same, and each and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the lands and prem-
547 ises hereby granted or intended so to be and each and every part and parcel thereof, with the appurtenances, unto the said party hereto of the second part, his successors and assigns forever, as joint tenants and not as tenants in common, for the uses and purposes in this indenture set forth and declared and subject to the provisions and requirements of the before-mentioned act of Congress of the United States and the act passed by the Legislature of the State of Illinois incorporating the said The Mount Vernon Railroad Company, and subject also to the possession, control, and management of the party of the second part so long as said construction bonds or obligations shall remain unforfeited by the proper performance of all the stipulations thereof: Provided always, and these presents are upon the express condition, That if the said The Mount Vernon Railroad Company shall well and truly pay or cause to be paid to the holders of the said construction bonds or obligations and every of them the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinbefore
548 provided, according to the true intent and meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease, *nunc* [become], and be utterly void.

And this indenture further witnesseth that these presents are made, executed, and delivered upon the terms, conditions, and agreements following—that is to say:

First. That the one hundred thousand — eighteen acres of land granted as aforesaid shall, within — months after the date of these presents, be carefully valued and appraised by the said parties of the first part, their officers and agents, and the relative value of each piece or parcel of land established for the purpose of division and attenement thereof into four classes of the following number of acres and valuations—that is to say: 1st, first class, consisting of lands of special value, as coal fields, quarries of slate, mineral, &c., from peculiarity of location, as being near town or village, — acres; minimum valuation, — per acre.

549 2nd. Second class, of lands of superior agricultural qualities and location, — acres; minimum valuation, — per acre.

3rd. Third class, of lands of high agricultural qualities, almost universal in the State of Illinois, — acres; minimum valuation, — per acre.

4th. Fourth class, of the lowest agricultural qualities within fifteen miles of the road or branc-es, but all capable of cultivation, — acres; minimum, — per acre, forming an aggregate valuation per acre of —; all of which the said parties of the first part, with as little delay as practicable, shall certify and declare to the said party of the second part, by proper list and schedule, under seal, with such description as shall enable the party of the second part to ascertain and establish the precise location, position, and boundaries of each and

every piece or parcel of said land, and the class to which the same belongs, and the price or sum for which the same — be sold or conveyed, which price or sum may be varied or changed from time to time at the pleasure of said parties of the first part: Provided, That the selling price of any piece or parcel of land shall in no case
550 be less than the minimum valuation of the same hereinbefore given, and by the class to which it is allotted, until the aggregate sum actually realized and received in money and by the surrender of construction bonds or obligations, as hereinafter provided, shall amount to the aggregate valuation of any of the classes above set forth and declared, when the said parties of the first part may instruct and empower the said party of the second part to sell and convey any remaining pieces or parcels of land of said class at such price as they may deem proper, even below the minimum valuation of the class, but not to alter or change the mode of selling in the appropriation of the proceeds and receipts from such sale.

Second. That the said party of the second part, having received from the said parties of the first part such said list, schedule, allotment, valuations, and selling prices, shall and will grant, bargain, sell, and convey to all persons, bodies politic or corporate, applying for the purchase of the land and premises above mentioned, making extended payment therefor at prices not less than the selling rates established by the said parties of the first
551 part, and shall require in payment the surrender of construction bonds or bond nearest in amount to the actual purchase-money and consideration of the conveyance and the payment of the residue of said purchase-money in cash; but in no case shall any piece or parcel of land be sold or conveyed by the said party of the *of the* second part without the surrender and consequent discharge of said construction bonds or bond, and whenever any purchaser may tender construction bonds or bond exceeding in amount the purchase-money of the land for which application is made the party of the second part may receive the same and pay the excess (provided the same does not exceed two hundred and fifty dollars in any one case) in money to the purchaser, the intent thereof being thereby to anticipate the payment of said construction bonds or bond by the sale and conveyance of said land in manner aforesaid.

3d, third. The said party of the second part shall and will cancel and discharge every construction bond or obligation and the interest warrants therein which he may receive in payment for land
552 and as part or the whole consideration of each deed or sale by defacing the seal of the corporation in receipt thereof, and will make or cause to be made in or upon the face thereof a note or memorandum, with proper description of the land sold and conveyed, with the date of the conveyance for which the same has been received, and cancelled in such manner and form as will enable the parties of the first part to trace and follow the appropriations of all the said construction bonds.

Fourth. That the said party of the second part shall and will set forth and declare in each and every deed of conveyance the true amount of the purchase-money of the land and premises conveyed

or intended to be conveyed thereby and the part thereof for which a bond or bonds may have been received, with the number and amount thereof, and also the sum actually paid in cash for the residue and remainder of said purchase-money, and also, whenever a bond or bonds exceeding the amount of the purchase-money may have been received in payment thereof, the amount in cash actually refunded to the purchaser or holder of such bond or bonds
553 for such excess.

Fifth. That the interest warrants of said construction bonds are obligations becoming due and payable during the progress of the work of constructing and up to —, inclusive of, & the warrants for the semi-annual interest becoming due and payable next after the completion and actual use of the main railroad and branches shall be paid from and out of the proceeds and avails of the said construction bonds or obligations as part of the cost of said road and branches, but that all interest warrants becoming due and payable thereafter when the said railroad and branches shall be put in operation shall be paid from and out of the receipts and income from the use and operation of the road and branches, unless the same be inadequate thereto, in which case any unpaid balance of the same shall be paid from the proceeds and avails of the said bonds.

Sixth. That the said party of the second part shall and will cede, set aside, and preserve all interest found as further and collateral security for the punctual payment of all the interest war-
554 rants of the said construction bonds or obligations, at the time when the same severally becomes due and payable, by the appropriation of the proceeds of sales of twenty thousand acres of the lands above described, set aside for this purpose and held by the said trustee, free from incumbrance.

Seventh. That the said party of the second part shall and will manage and invest the interest fund in such manner as will render the same at all times readily convertible into cash, to prevent any delay in the payment of the interest should the provisions heretofore made and declared be at any time inadequate for that purpose, and for the payment of any deficiency will use and appropriate the said interest fund in following manner: First, the current interest of the interest fund; second, the proceeds of the sales of the above-described lands.

And this indenture further witnesseth: That the said parties of the first part, for themselves and their successors, do covenant and agree that if default should be made in the payment of the
555 interest upon the said construction bonds or obligations, so that a sum equal to one year's interest of the whole amount of the said construction bonds or obligations already issued and secured by these presents, or that if default shall be made in the payment of the principal of said construction bonds or obligations, that then and from thenceforth it shall and may be lawful for the said parties of the second part to enter into and upon and take possession of all and singular the lands and all the premises included or intended to be included in this mortgage.

And, further, that the said party of the second part, having en-

tered into full possession *all* all and singular the lands hereinafter particularly set forth and described remaining unsold at the time of such entry, if any there be, may proceed to sell and dispose of the same, or so much thereof as shall be necessary for the purpose of paying said principal and interest, and may make such sales of the said premises, each and every of them, and all benefit and equity of redemption of the said parties of the first part therein at
556 public auction, giving reasonable and public notice of the time and place of said sale in the public newspapers of the State of Illinois published at Chicago and Springfield, and in two public newspapers of the city of New York; and as the attorney of the said parties of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyanee in fee simple, and out of the monies arising from such sale and sales to retain the princip*le* and interest which shall then be due on said construction bonds or obligations for the benefit of the holders thereof, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be), unto the Mount Vernon Railroad Company, its successors and assigns forever; which sale shall forever be a perpetual bar, both at law and in equity, against the said parties of the *the* first part, their successors and assigns, and all other persons claiming or to claim the premises so sold or any part thereof by, from, or under them.

557 And it is further provided that if after the said construction bonds or obligations shall be fully paid, together with all arrears of interest thereon, there shall be any of the above-described lands remaining unsold or any of the proceeds and avails of the said lands in the hands of the party of the second part unprovided for, then and in that case said party of the second part shall convey absolutely the said lands, and shall pay, transfer, and deliver said proceeds and avails to the said The Mount Vernon Railroad Company, its successors and assigns forever.

And it is here mutually agreed by and between the parties to these presents that the said party of the second part, his heirs, executors, or administrators, shall not be answerable for the acts, omissions, or defaults of his attorneys hereinafter referred to, and that he shall be responsible for gross negligence and willful default only.

And it is further agreed that the said parties of the first part, their successors, and all and every person or persons whom-
558 soever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the premises hereinbefore granted by, from, under, or in trust for them, shall and will at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, and cause to be made and executed, all and every such further and other reasonable acts, conveyances, and assurances in the law for better and more effectually vest-

ing and confirming the premises hereby granted or intend- so to be in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs and assigns, or his or their counsel learned in the law shall be reasonably advised or required.

And it is further provided that the parties of the first part shall, upon the request of the party of the second part, designate and appoint a commissioner, resident of the said county of Wayne, to make and execute conveyances of said land to purchasers thereof, as herein provided, and generally to carry into effect the provisions
559 hereof, and that the said party of the second part may execute and deliver *to* power of attorney to such commissioner authorizing and empowering *them* duly to make, execute, and deliver in his behalf, as such trustee, deeds and conveyances to the purchasers of such lands as may be proper, and to do such other acts and things as may be necessary to carry into effect the provisions of this instrument, and the execution of such conveyance by the said commissioner, when so empowered by the said party of the second part, shall be effectual to confirm and establish in such purchasers, respectively, all of the right, title, interest, and estate of the said party of the second part as fully, to all intents and purposes, as if the said party of the second part had personally made and executed the same.

In witness whereof the said parties of the first part have herewith
[SEAL.] set their hands and seals and the seal of the said county court the day and year first above written.

S. J. R. WILSON, [SEAL.]
Co. Judge.
THOMAS M. SCOTT. [SEAL.]

560 Signed, sealed, and delivered in presence of—
B. L. VORHEES.

STATE OF ILLINOIS, }
Wayne County. }

I, J. W. Barnhill, clerk of the county court of said county of Wayne and State of Illinois, do hereby certify that the above-named S. J. R. Wilson, Co. judge, and Thomas M. Scott, associate judge, personally appeared before me and acknowledged that they signed the foregoing mortgage and for the purpose therein named.

Given under my hand and the seal of said court this the 20th day of April, A. D. 1859.

[SEAL.] J. W. BARNHILL, *Clerk.*

Filed 3rd May, 1859.

R. B. SLOCUMB, *Clerk.*

STATE OF ILLINOIS, } *ss:*
Wayne County, }

I, John L. Handley, clerk of the circuit court and *ex officio*
561 recorder within and for the county of Wayne and State aforesaid, do hereby — that the above and foregoing is a

true and perfect copy of a mortgage given by the county court of Wayne county, Illinois, to Isaac Seymour, of the city of New York, as appears from the records in my office.

In witness whereof I have hereunto set my hand and official seal, [SEAL.] at my office, in Fairfield, this 3rd day of November, A. D. 1870.

JOHN L. HANDLEY, *Clerk.*

562 *Stipulation of Parties on Evidence.*

In the United States Circuit Court, Southern District of Illinois.

JAMES C. CLOYD *vs.* CLARISSA JORDAN *et al.* and Consolidated Causes. } Bill for Reforeclosure.

It is hereby stipulated that the several mense conveyances as set forth in the several bills herein are correctly set forth in said bills, and that said complainants derive title as therein set forth, without admitting, however, the execution or legality of the mortgage claimed to have been made by Wayne county, Illinois, on April 20, 1859, the object and intention of this stipulation being to avoid the necessity of introducing in evidence the several conveyances made by the master in chancery, as set forth in said bills, and the subsequent conveyance by which complainants claim title.

E. BEECHER, *Sol. for Complainant.*
R. P. HANNA & H. TOMPKINS,
For Respondents.

(Endorsed:) Filed October 2d, 1885. J. A. Jones, clerk.

563 *Defendants' Evidence.*

Circuit Court United States, Southern Dist. Ill. January Term, 1885.

ELIZABETH H. TAYLOR *et al.* *v.* J. B. BOZARTH *et al.* and Consolidation Cases. } In Chancery. Bill to Reforeclose.

To Edwin Beecher, H. C. Whitney, & W. B. Scates, att'y- for *deft-:*

In accordance with the order of the circuit court U. S., entered for either party to take depositions on notice, take notice that on the 1st day of April, 1885, between the hours of 10 o'clock a. m. and 6 o'clock p. m., and to be continued from day to day, at Fairfield, before John L. Handley, notary public, the respondent- will proceed to cause to be taken the deposition of S. J. R. Wilson, R. E. Mabry, J. E. Wilson, R. P. Hanna, & others residing in the said county of Wayne, to be read in evidence on the trial of this cause, and on

motion to dissolve the injunction therein had on the part of
564 respondents, at which time and place above mentioned for the taking of such deposition you can appear and cross-examine the said witnesses if you shall see fit so to do.

Dated this 23rd day of March, 1885.

Fairfield, Wayne county, Illinois.

R. P. HANNA,
H. TOMPKINS,
Att'y- for Respondents.

Endorsed: Fairfield, Ill., March 27, 1885.

I hereby acknowledge receipt of copy of the within notice this 25 day of March, 1885.

EDWIN BEECHER,
Att'y for Compl'ts.

Depositions taken before John S. Handley, notary public in and for the county of Wayne and State of Illinois, at his office, in Fairfield, in said county and State, to be used in evidence in the case of Elizabeth H. Taylor *et al. v.* J. B. Bozarth *et al.* and consolidation cases, in chancery, now pending in the circuit court
565 of the United States for the southern district of Illinois, in accordance with the notice hereto attached.

And now, on this 1st day of April, A. D. 1885, personally appeared at my office Edwin Beecher, attorney for the complainants, and H. Tompkins, attorney for the respondents, and JOHN C. ALEXANDER, a witness for the respondents, being first duly sworn according to law, on his oath deposes and says:

Testimony of John C. Alexander.

Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is John C. Alexander; aged 50 years; clerk; and place of residence, Wayne county, Illinois.

Q. 2. State if you have examined the sale of the swamp lands of Wayne county, as appears of record, the date and number of 40-acre tracts so sold since and including 1859 after April 20th; if so, state the number sold each year and when all was sold after that date.

Obj. to.

Ans. I have examined Exhibit M, a certified copy of the swamp-lands sales by the Wayne county clerk, and I find that there were sold in 1859 after the 20th of April, 24 forty-acres tracts; in 1860,
566 16 forty-acre tracts; in 1861, 7 40-acres tracts; in 1862, 24 forty-acre tracts; in 1863, 400 forty-acre tracts; in 1864, 417 forty-acre tracts; in 1865, 341 forty-acre tracts; in 1866, 105 forty-acre tracts; in 1867, 44 forty-acre tracts; in 1868, 2 forty-acre tracts, besides what was sold to the Ills. Southeastern Railway Company. There are a few tracts that I have not included, there being no date

to the sale of the same from the county. All of the lands were sold that was remaining in the year 1868 on the 13th day of October.

Obj. to.

(The above questions and answers are excepted to by the complainants' attorney.)

J. C. ALEXANDER.

Subscribed and sworn to before me this 1st day of April, A. D. 1885.

JOHN S. HANDLEY, *N. P.*

The respondents introduces certified copy of record of proceedings in the case of Kennicott *et al. vs.* The Board of Supervisors of Wayne County *et al.*, in the Supreme Court of the United States, so much thereof as recites the 3d amended bill in said cause appearing on pages 23 to 30, inclusive, of the said printed record; also contract made with Vanduser, Smith & Co., and the assignment
567 of the same to the Mount Vernon Railroad Co., as appearing in said record on pages 45 to 50, inclusive; also deed to Charles Wood, trustee, for the benefit and use of the Belleville and Fairfield and other railway companies by Wayne county, and the reconveyance back by the said Charles Wood to Wayne county, as appears on pages 116 to 125, both inclusive; the above to be read in evidence in this cause or a certified copy thereof to be made and filed herein.

The respondents also introduces a certified copy of the proceedings of the circuit court of the United States for southern district of Illinois, June 1st, 1868, and thereafter in the case of J. W. Kennicott *et al. vs.* The Board of Supervisors of Wayne County *et al.*, in chancery, marked Exhibit "H," being the proceedings in the said court for foreclosure of the mortgage of the Mount Vernon Railroad Company, the decree, sale, confirmation, and purchase in of the same by The Mount Vernon Railroad Company, the defendant therein, and being omitted from the record in the appeal taken in the above cause to the Supreme Court of the United States.

Obj. to.

568 Also at the same time and place JOSEPH E. WILSON, a witness for the respondents, personally appeared before me, and, after being first duly sworn according to law, on his oath deposes and says:

Testimony of Jos. E. Wilson.

Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is Joseph E. Wilson; aged 37 years; occupation, clerk of Wayne county; residence, Wayne county, Ills.

Q. 2. State if you have examined the records of Wayne county and find thereon a correct copy of the order here shown to you, marked Exhibit "F."

Ans. Yes; I find it, with the exception of the convening order of the terms—a correct copy of the record.

Q. 3. Examine Exhibit "G," here shown you, and state if you have compared that with the record in your office; if so, state if it is a correct copy thereof.

Ans. I have compared it with the record in my office, and I find it a correct copy of the record.

Q. 4. Examine also Exhibit "I," here shown to you, and state if you have compared it with the record; and, if so, state if it
569 is a correct copy.

Ans. I have compared it with the record, and I find that it is a correct copy.

The respondents here introduces a record of the county court from March, 1851, to the November term, 1876, inclusive.

Q. 5. State if you have examined that record in your office; and, if so, state if it purports to be a record of the proceedings of the county court of Wayne county for that period as kept in your office.

Ans. I have examined the record in my office, and it purports to be a record of the county court for the time stated.

Q. 6. State if these orders, marked Exhibits F, G, & I, which you have identified, are *they* correct copies of that record.

Ans. I find Exhibits F and G in the record identified, and the exhibit marked I in Book "B" of the County Court Records.

Q. 7. State if you have examined the records of the proceedings of the county court. And, if so, do you find any order calling a special meeting of the county court for April 20th, 1859?

570 Ans. I find no record of a call for a special meeting at that time.

X examined:

Q. 1. State if you find a record of a special meeting held on the 20th of April, 1859.

(This question is objected — by respondent as being incompetent and improper.)

Ans. Yes; there is a record of such a meeting.

Q. 2. You answered before that you did not find a record of a call for the meeting of April 20th, 1859. What book did you refer*red* to at that time?

Ans. I referred to the book in which I find the record of the meeting of April 20th, 1859. I have not examined the whole book, but only that part of it where the record of the meeting is entered.

Re-examined:

Q. 1. Examine the record from the regular March term, 1859, to what purports to be the special term of April 20th, 1859, and see if you find any order for a special term for April 20th, 1859.

Ans. I have examined the record, and I find none.

571 (The complainants objects to all questions and answers on direct examination and re-examination.

And the respondents object to the questions and answers on the cross-examination.)

J. E. WILSON.

Subscribed and sworn to before me this 1st day of April, A. D. 1885.

JOHN L. HANDLEY, *N. P.*

Adjourned until 9 o'clock a. m., April 2nd, 1885.

And now, on this 2nd day of April, 1885, personally appeared before me SAMUEL J. R. WILSON, a witness for the respondents, who, being first duly sworn according to law, on his oath deposes and says:

Testimony of S. J. R. Wilson.

Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is Samuel J. R. Wilson; aged 68 years; occupation, farmer; residence, Wayne county, Illinois.

Q. 2. State if you were county judge of Wayne county in the year 1859; if so, for what period of time.

Ans. I was county judge of Wayne county from 1857 to 1861.

572 Q. 3. State if you had anything to do with the signing of what purported to be a deed of trust and mortgage of the swamp lands of Wayne county—about 100,000 acres—dated April 20th, 1859, to the use of the Mount Vernon Railroad Company, to secure the payment of $800,000 of their bonds to be issued; if so, state the circumstance of their preparation and their presentation for your signature. State when and where it was done and what was the consideration.

Ans. I did. The trust deed and mortgage were brought here already prepared by B. L. Voris, one of the firm of the Mt. Vernon Railroad Co., and Gov. Casey and J. T. Vanduser, and, I think, A. M. Grant, who were also members of the same firm. These parties presented the instruments to me for my signature, and there was no other members of the county court present at that time but myself. My remembrance is that I signed the instruments in my office of county judge in Fairfield, Ills. There was present at the time of signing Thos. M. Scott, who was also a member of county court of Wayne county, who also signed the instruments. The con-

573 sideration was the building of a railroad from Mt. Vernon to Fairfield and equip-ing the same, and also the operating of the railroad.

Q. 4. State if the former contract made by Wayne county with Vanduser, Smith & Co. was in force at that time; and, if so, what was said about that contract being the consideration.

Ans. It was. The contract was the consideration, and they were to build the railroad according to the specifications of that contract.

Q. 5. State if anything was said about their having an assignment of said contract; if so, state fully what was said.

Ans. They, the Mt. Vernon Railroad Co., said they had the assignment of the contract made by the county with Vanduser, Smith & Co. and induced us to believe so, and that was the reason we signed the trust deed and mortgage.

Q. 6. State if there was any regular meeting of the county court or any call for a special meeting for April 20th, 1859.

Ans. There was not.

574 Q. 7. State the circumstance of you and Scott getting together that day, the place, and fully the negotiations for your signatures with the parties you have named.

Ans. I was living in Fairfield; Major Scott was living in the country, and whether he came to town or was sent for I do not recollect. He was here. The consultation was held at my residence, in Fairfield, and a good deal of the time out under an oak tree in front of my residence. They were to fully complete and equip and run the said railroad.

Q. 8. Examine Exhibit X here handed you and state if it is a true copy, as examined by you, of a record of the proceeding of the county court April 20th, 1859. State, if you know, how it came of record and what you may know about it, fully.

Ans. I have examined the exhibit, and it is a true copy of the record. I think I wrote out something of the kind, but I don't know how it became of record. I know nothing about the record further than I have stated.

575 Q. 9. State who was the other judge of the county of Wayne. Did he live in the county at the time you and Scott signed said instruments; and, if so, did you give him any notice of a special meeting of the court?

Ans. Wm. Irwin was the other associate judge. He lived in Wayne county at the time. I gave no notice to him, for we had no special meeting at the time.

Q. 10. State what was said and done, if anything, about the Mt. Vernon Railroad Co. executing a mortgage on all their property at the time you and Scott signed what purported to be the trust deed and mortgage on said lands.

Ans. It was understood that they had done so.

Q. 11. State if you went to New York city after the execution of said instruments, and if you took an active part in trying to build said railroad.

Ans. I went to New York city some time afterwards and did all I could to further its success.

576 Q. 12. State where the office of the Mt. Vernon Railroad Co. was kept after the execution of the instruments.

Ans. It was kept in No. 14 Wall street, New York city.

Q. 13. State if you held any official position in the Mt. Vernon Railroad Co.; if so, what and how long?

Ans. I did; I was a director from some time in 1859 until its collapse.

Q. 14. State how much stock you held and how much it cost you.

Ans. I think there was transferred to me $20,000 of stock. I did not pay anything for it.

Q. 15. State if the contract made by Vanduser, Smith & Co. was ever fulfilled by them or any one of them.

Ans. It was never fulfilled, nor any part, that I ever knew of.

Q. 16. State how long you have lived in Wayne county, and would you have known if any work had been done?

Ans. I have lived in Wayne county 63 years past. I certainly would have known if any work had been done.

577 Q. 17. Examine Exhibit "G," extending the time of Vanduser, Smith & Co. and their assigns in which to commence and complete the railroad under the contract, and state by whom and where the same was got up and if you had anything to do with placing it on the record.

Ans. I have examined the exhibit. It was got up in court by the request of the company. I don't recollect of having anything more to do with it, only as a member of the court.

Q. 18. Are you the person mentioned in Exhibit G to whom a plat of the located line in Wayne county as far as Fairfield by the 15th day of April, 1860, was to be presented and filed? If so, state if any such plat was filed or left with you.

Ans. I am the person referred to. The plat was never filed or presented to me.

Q. 19, State if there was any work done after the extension.

Ans. Not to my knowledge.

Q. 20. State about what time the effort to build the railroad was abandoned.

Ans. In the latter part of 1860 or the fore part of 1861.

578 It was in the fore part of 1861 that I left New York for the last time.

Q. 21. State, if you know, in whose hands the bonds of the Mt. Vernon Railroad Co. were at the time the building of the railroad was abandoned.

Ans. All that I knew anything about was in the hands of Charles W. Lewis. They were pretty well scattered.

Q. 22. State if any of the bonds were sold or negotiated by or — the railroad company; if so, how many.

Ans. There never was a bond sold or negotiated by me or by the railroad Co., to my knowledge.

Q. 23. State if you had or sold any bonds either for yourself or the county of Wayne.

Ans. I never had any bonds or sold any for myself or Wayne county.

Q. 24. State your transactions, if any, with the bonds; state fully.

Ans. I received some or gave an order for them, but they were never in my hands.

Q. 25. State if you remember of the railroad companies desiring bonds to be taken from the hands of Ira Hersey and if you

579 had anything to do with the transfer of these bonds; if so, state fully.

Ans. I think it was thought best by the company that the bonds

should be removed. I had something to do with them, but I don't remember now what it was. I never took them out of the hands of the company.

Q. 26. Examine Exhibit "I" here presented to you and state what you may know about the county of Wayne selling the lands under that order; and, if so, state whether the lands after the date of the order was sold generally to any that might want to purchase.

Ans. I know nothing about the order. I bought 80 acres after that order and know of others buying by hearsay. I did not see them buy; I was in the army at that time.

Q. 27. State if the lands were generally sold by the county after the order and occupied by the purchasers.

Ans. I know of some of the lands being occupied; parties claimed they had purchased the land.

Q. 28. State if there was any difference in the price of the
580 lands before or after the execution of the trust deed and mortgage.

Ans. There was no difference that I know of.

Q. 29. State if Isaac Seymour abandoned his trust, or what you may know about.

Ans. The last time I saw Isaac Seymour was early in 1861, and he said the whole thing had fell through with and gone to the board or under.

X examined:

Q. 1. You speak of the consideration of the contract entered into by yourself and Thos. M. Scott April 20th, 1859. Do you mean by that contract the deed of trust and mortgage executed to Isaac Seymour?

Ans. I do.

Q. 2. Was there any other contract executed by yourself and Thos. M. Scott at that time?

Ans. There was not.

Q. 3. Did the said deed of trust and mortgage recite the contract for which they were issued?

Ans. I don't remember.

Q. 4. Will you state if the record from which Exhibit X
581 was taken is a record of the proceeding of the county court?

Ans. It is.

Q. 5. Have you examined the signatures on the record purporting to be yours and Thos. M. Scott's; if so, are they genuine?

Ans. Mine looks like it is my signature?

Q. 6. Who was Charles W. Lewis referred to in your answer to question No. 21?

Ans. He was the treasurer of the railroad Co.

Q. 7. You speak of bonds being in his hands at the time of the abandonment of the railroad project. Have you any actual knowledge of any bonds being in his hands at that time; and, if so, what ones?

Ans. I have no knowledge of it, only what he told me.

Q. 8. Did you, as agent or commissioner of Wayne county, having control of the bonds in question?

Ans. I never exercised any control of the bonds except to assist in transferring them from Hersey to Isaac Seymour.

Q. 9. Were you in your business to New York in your efforts to secure the completion of the railroad acting for or under the directions of the official authority of Wayne county?

582 Ans. I went there once or twice at the request of the county to see what was causing the delay. At other times I went there at the request of the company, and when I went at the request of the company it was as a director, but I tried to guard the interest of the county.

Q. 10. By whom were your expenses paid on your visits to New York?

Ans. Sometimes by the railroad company, and one or two times my expenses were paid by the county.

Re-examined:

Q. 1. You state in your former examination that the representatives of the Mt. Vernon R'y Co. represented to you and Thos. M. Scott that they had acquired and then had the contract of Vanduser, Smith & Co. by assignment. State if that contract was afterwards assigned to the Mt. Vernon R'y Co.; and, if so, at what date.

Ans. It was generally understood it was assigned. I can't answer when it was assigned; I did not see the assignment.

583 Q. 2. You state that all you know about Lewis having the bonds in his possession was his statement. State if the company did not have a safe in which the treasurer kept the bonds.

Ans. The company had a safe in the office.

All the questions of the respondents and the answers thereto are objected to by the complainants.

The respondents objects to all the questions of the complainants and the answers thereto.

S. J. R. WILSON.

Subscribed and sworn to before me this 2d day of April, A. D. 1885.

JOHN L. HANDLEY, *N. P.*

The respondents here introduce as evidence a certified copy of the mortgage executed by the Mount Vernon R. R. Company to Isaac Seymour, and is hereto attached and marked Exhibit "D."

Testimony of David H. Holman.

Also at the same time and place came DAVID H. HOLMAN, a witness for the respondents, who, being first duly sworn according to law,

584 on his oath deposes and says:

Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is David H. Holman; aged 26 years; occupation, deputy circuit clerk of Wayne county; residence, Wayne county.

Q. 2. State if this book shown you, marked record K, is a record of deeds in your office.

Ans. Yes, sir.

Q. 3. Examine page 251 and state who is the grantor and who are the grantees in the deed there recorded.

Ans. The grantor is the county court and the grantees are Thos. Cooper, John Moore, C. L. Orgam, Sylvester Rider, L. J. S. Turney, Thos. H. Lowrey, John Wilson, John Trousdale, Henry Holtezhousen, J. J. R. Turney, Samuel Cope, and Edward Bonham.

Q. 4. State the date of the deed, what it purported to convey, and its consideration and terms of forfeiture, if any.

Ans. It is dated August 24th, 1857; it purported to convey all of the swamp lands of Wayne county unsold at that
585 date; it- consideration was the building of a railroad from the Wabash river through Wayne county or from the Ohio river through Wayne county within three years from the date thereof, with an extension of two years, and if the grantees failed to build said railroad within the time stated the lands were to be forfeited to the county.

Q. 5. State if you have examined —; and, if so, do you find any reconveyance to the county of Wayne by said grantees?

Ans. I have, and did not find any.

DAVID H. HOLMAN.

Subscribed and sworn to before me this 2nd day of April, 1885.
JOHN L. HANDLEY, *N. P.*

The complainants objects to all the above questions and the answers thereto.

Also at the same time and place came JOHN WILSON, a witness for the respondents, who, being first duly sworn according to law, on his oath deposes and says:

Testimony of John Wilson.

586 Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is John Wilson; aged 65 years; occupation, farmer; my residence, Wayne county, Ills.

Q. 2. State if you were one of the twelve, consisting of Thos. Cooper *et al.*, citizens of Wayne county, to whom the county conveyed the swamp lands in 1857 for the purpose of building a railroad.

Ans. I was.

Q. 3. State whether any work was ever done under that contract by the twelve, or under their direction.

Ans. There was not.

Q. 4. State whether you ever conveyed your interest under the deed.

Ans. We were called together without question, and there was some talk of conveying the lands to Gen. Pickering, but we did not re-

convey to the county. I am not sure whether we conveyed to Pickering or not.

Q. 5. State what interest Gen. Pickering had in the railroad and what was the occasion of your meeting to consider the question of conveying to him.

Ans. My understanding was that Gen. Pickering had
587 bought out the right of way and franchise of the State of Illinois of the railroad from Mt. Carmel to Alton, in this State. The occasion of our meeting was the county had made a contract with Vanduser, Smith & Co., and Gen. Pickering claimed a prior claim to the line of railroad. I think Pickering survey was made and the line located before the contract was made between the county and Vanduser, Smith & Co.

Q. 6. State if Gen. Pickering did any work on his line after the contract was made with Vanduser, Smith & Co.

Ans. I don't remember if it was before or after, but he did work on the line after the conveyance was made to the twelve by Wayne county.

Q. 7. State if the contract with Vanduser, Smith & Co. was made while the contract with the twelve was in force.

Ans. It was.

Q. 8. State what you may remember, if anything, of there being a strife between Pickering, on the one part, and Vanduser, Smith & Co., on the other, as to who had the priority of right to build the proposed east and west railroad through the county.

588 Ans. There was a strife between them. They both had lines surveyed and did work on each line. I don't remember if the strife was about the priority of claim or not. I recollect that Pickering claimed a priority of claim.

(The complainants enter their objections to all the above questions and answers thereto.)

JOHN WILSON.

Subscribed and sworn to before me this 2d day of April, A. D. 1885.

JOHN L. HANDLEY, *N. P.*

STATE OF ILLINOIS, }
Wayne County, } *ss:*,

I, John L. Handley, a notary public in and for the said county and State, do hereby certify that the above evidence was taken before me in my office, in Fairfield; that each of the above-named witnesses were duly sworn according to law before their evidence was written down, and that afterwards the evidence written was read to them and they each signed their names thereto and sworn that the matters and things therein contained were true, and
589 that evidence was taken in the presence of Edwin Beecher, an attorney for the complainants, and H. Tompkins, an attorney for the respondents.

[SEAL.] In witness whereof I have hereunto set my hand and seal this 2nd day of April, A. D. 1885.

JOHN L. HANDLEY,
N. P., Wayne Co., Ills.

590 EXHIBIT "F" TO TESTIMONY OF J. E. WILSON.

Exhibit F.

Order Passed September Special Term, 1855.

Ordered, That the clerk of this court be required to advertise for a poll to be opened at the ensuing November election, that the people may vote for or against the county court of said county giving as a bonus twenty-five hundred acres of our swamp lands per mile to any responsible company that will build a railroad through said county, commencing at a suitable point on the Central railroad and running east by the way of Mt. Vernon and Fairfield to the east line of Wayne county or to Mt. Carmel, on the Great Wabash river.

Ordered, That the Independent Press and all other papers favorable to a railroad on said contemplated line and extending to Saint Louis be requested to publish the foregoing order.

October special term, 1855.

Whereas at a meeting of the citizens of Wayne county held at the court-house, in Fairfield, on Saturday, the 6th inst. for the purpose of taking into consideration the subject of our swamp lands as a bonus for the building of a railroad through our county, the meeting was organized by calling E. A. Spooner to the chair and appointing Thomas Lowry secretary, when the following was adopted by the meeting without a dissenting voice, to wit:

Whereas the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed, which might retard our getting a railroad in a speedy way: Therefore

Resolved, That the said county court be requested to order a vote "for a railroad" and "against a railroad," and if a majority of the votes in the county be cast for a road the said county court shall give our swamp lands or such part thereof as shall be necessary to secure the building of a railroad through Wayne county.

It is therefore ordered that the clerk of this court be required to advertise for a poll to be opened at the different precincts of Wayne county at the ensuing November election, that the electors may vote for a railroad and against a railroad, in pursuance of the foregoing resolution.

591 EXHIBIT "G" TO TESTIMONY OF J. E. WILSON.

Exhibit G.

Board of supervisors. March term, A. D. 1860.

MARCH 9TH, 1860.

Present: S. J. R. Wilson, county judge; Thomas M. Scott, associate; William Irwin, associate.

On Friday, being the fifth day of the term, it is ordered by the court that the contract with Vanduser, Smith & Co., entered into by Wayne county, of the one part, and Vanduser, Smith & Co., of the second part, on the 19th day of November, A. D. 1858, for the completion and construction of a railroad through said Wayne county, be so amended as to give the said Vanduser, Smith & Co. or their assigns an extension of ten months in which to complete said railroad to Fairfield, in addition to the time mentioned and specified in said original contract, and also an extension of eighteen months in addition to the time mentioned and specified in said original contract for the completion of said railroad to the eastern line of said county, and said Wayne county hereby agrees to faithfully execute and perform all the covenants, conditions, agreements, and stipulations mentioned in said original contract to be performed by and in behalf of said Wayne county unto said Vanduser, Smith & Co. or their assigns in case said Vanduser, Smith & Co. or their assigns shall have said railroad completed to Fairfield by the 19th day of September, A. D. 1861, to the eastern line of said Wayne county by the 19th day of May, A. D. 1862, as fully in every respect as though said railroad had been completed to Fairfield by the 25th day of December, A. D. 1859, and to the eastern line of said Wayne county by the 19th day of November, A. D. 1860, as stipulated in said original contract.

This extension is made upon this express condition: That said Vanduser, Smith & Co. or their assigns furnish to S. J. R. Wilson,
592 county judge of said Wayne county, a plat of the located line through said Wayne county as far as Fairfield by the 15th day of April, A. D. 1860, and make a *bona fide* commencement of the grading in said Wayne county on said line by the 15th day of May, A. D. 1860, and keep at least fifty hands employed at said grading in Wayne county for the space of six months, and after the expiration of said six months from the said time of commencing said grading said Vanduser, Smith & Co. or their assigns shall have and keep employed at said grading upon said line at least one hundred hands, unless prevented by the inclemency of the weather; and in case said Vanduser, Smith & Co. or their assigns shall fail to keep said hands employed upon said line at said grading as aforesaid until said grading is completed for the space of one month, unless prevented by the inclemency of the weather as aforesaid, or shall fail to keep and perform any of the other conditions of this supplement, then this order and everything herein contained

shall cease and be null and void; otherwise to remain in full force and effect.

S. J. R. WILSON,
County Judge.
THOMAS M. SCOTT.
WILLIAM IRWIN.

593 EXHIBIT "I" TO TESTIMONY OF J. E. WILSON.

Book B, page 184.

EXHIBIT I.

December Special Term, A. D. 1862.

DECEMBER 1ST, 1862.

Order to Sell Swamp Lands.

It is hereby ordered that Charles Wood, drainage commissioner, be, and he is hereby, authorized to sell the swamp and overflowed lands at private sale at two dollars per acre, on the following conditions, to wit: Any person that is now living on said swamp lands shall be entitled to file his claim and enter said lands within twelve months from the date of this order, to the exclusion of all others.

Second. The person having improvements on said land shall be entitled to file his claim and enter said lands within twelve months from the date of this order, to the exclusion of all others.

And it is further ordered that any person wishing to purchase any of said lands for actual settlement or cultivation or for the benefit of timber to support their farms shall have the right to deed said land, by filing their affidavit to that effect, in any quantity not exceeding one hundred and sixty acres, by paying down one-third and the balance in one and two years, with six per cent. per annum. And it is further ordered that the drainage commisssioner pay all the money that accrues from the sale of said swamp lands, as above stated, not otherwise appropriated, to the treasurers of the several towns in said county, according to the number of children in each township over the age of five and under twenty-one years, to be used as a school fund for the support of common schools; and it is ordered that said commissioner make an annual report of his acts at the December term of this court.

[Endorsed:] In circuit court U. S. *Court*, southern dist. Ill. January term, 1885. Elizabeth H. Taylor *et al. vs.* J. B. Bozarth *et al.* and consolidated cases. Depositions filed, taken on motion to dissolve injunction. Filed April 8, 1885. Cost, $15.00; p'd by respondent.

594 EXHIBIT X TO TESTIMONY OF S. J. R. WILSON.

Ex. X.

April special term, 1859.

At a special term of the county court of Wayne —, begun and held at the court-house, in Fairfield, on the 20th of April, 1859.

Present: Hon. S. J. R. Wilson, judge; T. M. Scott, associate; J. W. Barnhill, clerk.

Order of County Court of Wayne County.

And now, on this day, the court executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in Wayne county. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, which is entered of record in the recorder's office of said county in Mortgage Book B, pages 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymour as collateral security to enable the Mt. Vernon Railroad Company to procure money to
595 build the railroad through Wayne county from the eastern boundary of said Wayne county to Mt. Vernon, in Jefferson county, and which mortgage referred to *and* is recorded in the recorder's office of said Wayne county in Mortgage Book B, pages 341 to 359.

And it is ordered by the court that Sm. J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymour, as aforesaid, in the said county of Wayne, State of Illinois.

S. J. R. WILSON, *Co. Judge.*
THOS. M. SCOTT.

596 EXHIBIT "D" TO DEPOSITIONS OF DEFENDANTS.

Mortgage of the Mount Vernon Railroad Company to Isaac Seymour, Esq

[On margin in pencil:] 168 was omitted from the record in taking the appeal to the supreme court.

This indenture of mortgage, made the twentieth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, between the Mount Vernon Railroad Company, a corporation created by an act of Legislation of the State of Illinois approved on the 15th day of February, in the year of our Lord one thousand eight hundred and fifty-five, of the first part, and Isaac Seymour, Esquire, cashier of the Bank of North America, of the city of New York, trustee, as hereinafter mentioned, of the second part, witnesseth:

Whereas the parties of the first part, for the purpose of raising funds from time to time for the construction and completion of the railroad and branches authorized by the provisions of the said act of incorporation and for the purchase of iron and other materials to

be used therein and for the expences of the organization and maintenance of the said corporation and compensation of the officers and agents, trustees, engineers, and other necessary assistants, propose to execute and deliver their construction bonds or obligations,
597 in pursuance of the provisions of the act aforesaid, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of the said construction bonds or obligations, in the just and full sum, in the aggregate, of eight hundred thousand dollars, lawful money of the United States of America, secured to be paid by their six hundred construction bonds or obligations of and for one thousand dollars each and by their four hundred construction bonds or obligations of and for five hundred dollars each, providing for the payment unto said persons, associations, bodies politic or corporate, and their executors, administrators, successors, survivors, and assigns, respectively, of one thousand dollars and five hundred dollars named in said construction bonds or obligations, respectively, on the first day of March, which will be in the year one thousand eight hundred and seventy-four (1874), and also interest for the same at and after the rate of seven per centum per annum, payable on the first day of every month of March and September ensuing the date of the said construction bonds or obligations until the principal sums and interest named in said construction bonds or obligations, respectively, shall be severally paid and satisfied in the manner and form in the said construction bonds
598 or obligations set forth and declared, as by reference thereto will more fully appear—

Wayne Co. mortgage. The payment of which construction bonds is primarily secured by a mortgage on one hundred thousand acres of land in said county of Wayne, bearing even date herewith, executed by the judges of the county court of said county pursuant to the charter of said Mount Vernon Railroad Company as provided in said mortgage:

Now, therefore, this indenture witnesseth: That the said The Mount Vernon Railroad Company, under and pursuant to the powers vested in it by the laws of the State of Illinois and the proceedings thereunder, and also under and pursuant to a resolution of its board of directors, duly made and entered upon the minutes of the proceedings of its said board, for the purpose and with the intent the better to secure the payment of the said bonds, with the interest thereon, according to the tenor and effect of the same, and in consideration of one dollar, lawful money of the United States of America, by the said party of the second part in hand well and truly paid to the said party of the first part at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, assigned, transferred,
599 and set over, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, transfer, and set over, convey, and confirm, to the parties of the second part, as trustee and in trust, and to his heirs, executors, administrators, and his or their successors, all and singular the railroad of the said

Mount Vernon Railroad Company, constructed and to be constructed from the village of Ashley, Washington county, to the eastern boundary of Wayne county, in the State of Illinois, together with all its, said company's, real estate, lands, tenements, and hereditaments, acquired and appropriated for the purposes of a right of way for single or double track railroads and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures; and also all and every the privileges, franchises, and rights of the said party of the first part, acquired at the date of this mortgage or hereafter to be acquired by it, and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of the said party of the first part, wheresoever and whatsoever, now owned by the said party of the first part or hereafter to be owned by it; and also all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, carriages, tools, machinery, and equipments for the railroad of the said party of the first part or which it may hereafter acquire or receive for the purpose of using in connection with the operation of the said railroad; and also all goods and chattels employed in and about the operation of said road, now owned by said party of the first part or hereafter to be owned or acquired by it, in any way relating or appertaining to the said railroad, together with all the tolls, rents, issues, incomes, profits, moneys, rights, benefits, and advantages to be derived, received, or had therefrom by the said party of the first part in any way whatsoever; all which are declared to be appurtenances and fixtures of the said railroad and to be taken as part thereof and not to be separated therefrom; to have and to hold the premises, property, rights, privileges, and franchises hereinbefore assigned or intended so to be and every part and parcel thereof, with the appurtenances, to the said Isaac Seymour and his successors, in trust for the person or persons, bodies politic or corporate, who shall become holders of said bonds or any of them, subject to the terms and stipulations of the said bonds and the several laws and acts of the Legislature of the State of Illinois relating to said company, upon the condition, and these presents are upon the express understanding and provision, that if the said corporation, parties hereto of the first part, its successors or assigns, shall well and truly pay or cause to be paid the said sums of money mentioned to be paid in the said bonds, to secure which this mortgage is made, and interest thereon at the time and in the manner in said bonds respectively mentioned, according to the time, intent, and meaning thereof, that then these presents and the estate hereby granted shall cease, determine, and be void; and the said party of the first part hereby covenants and agrees to well and truly pay the said sums of money mentioned in said bonds to be paid respectively, together with the interest thereon, and that in case default shall be made in the payment of the interest on any of the said bonds or any

The conveyance by mortgage.

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part thereof on any day when the same shall have been lawfully demanded and the same shall remain in arrear sixty days thereafter, or if default shall be made in the payment of the principal of the said construction bonds and the same cannot be realized from the avails or by a sale of the lands described in the said mortgage hereinabove referred to, bearing even date herewith, as therein provided, it shall and may be lawful and the said party of the second part is hereby expressly and fully authorized and empowered to enter upon in that case and take possession of all and singular the said railroad and the property and premises hereby mortgaged and, through the agency of the persons he may from time to time appoint, to collect and receive the tolls, incomes, and profits of said roads hereby conveyed for the purpose of the security aforesaid and until the same shall be sold and disposed of by him as hereinafter mentioned, and shall thereupon, within such reasonable time as to him shall seem proper, not less than sixty days, and upon an advertisement of at least six weeks, to be had in one or more newspapers published in the following places, viz., Chicago and Springfield, in the State of Illinois; Indianapolis, in the State of Indiana, and in one or more daily papers published in the city of New York, before the time fixed for such sale, which advertisements shall mention the day, hour, and place at which such sale shall be had, proceed to sell at public auction to the highest bidder as well the said railroad and franchises as all other the property and premises hereby granted and conveyed or intended so to be and all benefit and equity of redemption of the said party of the first part therein whatsoever, always with the benefit of the franchise and subject to the conditions thereof; and as the attorney or attorneys of the said company, for that purpose by these presents duly constituted, the said party of the second part and his heirs, executors, and administrators or their successors shall have full power and authority to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance for the road, lands, tenements, and real estate, in fee simple or otherwise, according to the title or interest of the said company therein, and good and proper conveyances and assignments of the other property hereby granted and assigned; which sale so to be made shall be a perpetual bar, both at law and in equity, against the said party of the first part, its successors and assignee, and all persons claiming by, from, or under it or them in anywise; which said sale and conveyance so to be made shall operate to transfer all the right, title, and interest, reversionary or otherwise, of the said The Mount Vernon Railroad Company in the premises so sold and conveyed, and out of the moneys arising either from the income or profits of the said road or the sale aforesaid, after first deducting the expences incurred in carrying on the business of the road and in keeping the same in repair, and the said party hereto of the second part, his heirs, executors, administrators, or successors, shall—

The lands.

602

What they could sell.

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First. Pay and discharge all costs, charges, counsel fees, and ex-

penses incurred in or about his proceedings in the execution of the trusts of this mortgage, including a reasonable compensation to himself for his services therein; and shall—

Second. Apply so much of the residue of said moneys as may be necessary to pay and discharge in full all the moneys due on the said bonds hereby intended to be secured, with the interest then due thereon.

Covenant to pay taxes.

This indenture further witnesseth that the said party of the first part shall pay all taxes, charges, rates, levies, and assessments levied or assessed or to be levied or assessed upon the premises or property hereby conveyed and assigned or intended so to be, and shall, at its own proper cost and charges, do all things necessary to be done to preserve and keep intact the lien hereby created, and shall take and avail itself of no advantage of or in any way arising from or out of any valuation, appraisement, or extension laws or of any laws that now are or hereafter may be enacted that may in any way whatever be construed or designed to alter or effect or change
605 in any way whatever the time, place, and manner of realizing and perfecting the rights and interests of the several holders or any of them of the bonds the payment whereof and the interest thereon this indenture is given to secure; and the said party of the first part, for itself, its successors, and assigns, do hereby covenant and agree to and with the said party hereto of the second part, his heirs, executors, administrators, successors, and assigns, to make, execute, and acknowledge and deliver, and cause to — made, executed, acknowledged, and delivered, all and singular such further and other deeds, instruments, assurances, and obligations, and to do and perform all and every such further and other act, matter, and thing as shall hereafter from time to time be necessary or as the said trustee or his counsel learned in the law shall reasonably advise, devise, or require for the better effecting the objects and purposes of these presents and of vesting in said party of the second part, his heirs, executors, administrators, or any successors in the trusts aforesaid, the said railroad and the premises and property herein expressed to be conveyed or intended so to be; and it is hereby further agreed that the said trustee shall not be bound to take any steps under this trust and in the execution thereof (except at his own option) which, in his opinion, will involve him in personal liability or expenses, unless the bondholders or
606 some one of them shall secure and indemnify said trustee against such liability and expense; and the said trustee is hereby invested with full power to appoint such agents, attorneys, or counsel to act in his behalf hereunder, except only as to the release, discharge, or satisfaction of this mortgage or of the property or premises or any part thereof covered hereby, as may be proper; and it is hereby further provided, and these presents are upon the express condition, that upon the payment or satisfaction of the amount due by the said party of the first part and mentioned to be secured by these presents as herein aforesaid, then these presents and the estate hereby granted to the said trustee shall cease and be

void, and the said party of the first part shall thereupon be immediately and fully reinstated with the said premises hereby granted in law and in fact without any entry or other act whatever, and that until default shall be made by the said party of the first part in the payment of the indebtedness hereinbefore mentioned to be made by it the said party of the first part, its successors and assigns, is to remain in quiet and peaceable possession and enjoyment of the said property and premises hereby conveyed or intended to be as aforesaid.

Possession intended to be conveyed.

607 In witness whereof the party of the first part has hereunto affixed its corporate seal and caused the same to be attested by the signature of its president and treasurer, at Fairfield, in the State of Illinois, the day and year first above written.

B. L. VOREES, *President.*
N. A. SMITH, *Treasurer.*

Signed, sealed, and delivered in presence of—
O. B. BAILEY.
L. J. GERMAIN.

STATE OF ILLINOIS, }
Wayne County. }

I, R. B. Slocumb, clerk of the circuit court in and for said county, do hereby certify that B. L. Vorees, who is personally known to me as the real person whose name is subscribed to the foregoing mortgage deed, appeared before me this day in person and acknowledged that he executed the same as his free and voluntary act and deed for the use and purposes therein set forth.

608 Given under my hand and seal official, at Fairfield, this 20 day of April, 1859.

[SEAL.]

R. B. SLOCUMB,
Clerk C. C. W. Co., Ill.

Filed 20 April, 1859.

R. B. SLOCUMB, *Clk.*

STATE OF ILLINOIS, }
Wayne County, } *ss:*

I, R. E. Mabry, clerk of the circuit court and *ex officio* recorder in and for said county and State aforesaid, do hereby certify that the above and foregoing is a true, complete, and correct copy of the record of a mortgage given by the Mount Vernon Railroad Company to Isaac Seymour, as trustee, as appears of record in Book B, page 297, &c., which book is a part of the records of my office.

[SEAL.] Given under my hand and official seal this second day of April, A. D. 1885.

R. E. MABRY,
Clerk & Recorder.

(Depositions and exhibits endorsed:) Filed April 9th, 1885. J. A. Jones, clerk.

609 Afterwards, to wit, on the seventeenth day of January, in the year of our Lord one thousand eight hunderd and seventy, came said complainants, by their said solicitors, and filed in said clerk's office their amen-ment to bill; which said third amendment to bill is in the words and figures following, to wit:

DEF'TS' EX. "A."

3d Amended Bill in Kennicott Case. Filed Jan'y 17th, 1870.

3rd amended bill.

In the Circuit Court.

UNITED STATES OF AMERICA. }
Southern District of Illinois. }

To the hon. judges of the circuit court of the United States for the southern district of Illinois:

Your orators, John Kennicutt, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, Austin Myers, John H. Brown, and Cyrus Wakefield, Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, and Joseph Burnett, who are citizens of the State of Massachusetts; Morris J. Earle, who is a citizen of the State of New Jersey; William L. Rolston, who is a citizen of the State of Ohio, and William R. Hodges, who is an alien and subject of Her Majesty Victory, Queen of Great Brittain and Ireland, would respectfully represent unto your honors that on the 15th day of February, A. D. 1855, the Legislature of the State of Illinois by an act entitled "An act to incorporate the Mount Vernon Railroad Company," approved on said day, enacted that all persons who should become stockholders under the provisions of said act and their successors became and were thereby created a body corporate and politic by the name of the Mount Vernon Railroad Company, with all the rights and powers incident and *and* necessary to such corporation; that by the further terms of said act it
610 was provided that when an amount equal to one thousand dollars per mile of the rout- of said road should be subscribed to the capital stock of said company such subscribers might meet at Mount Vernon and elect seven directors and as many more from time to time as might be fixed by law.

And orators, by leave, refer to said act and pray that the same be taken as a part of this amended bill of complaint.

Orators further show to your honors that under authority of said act an amount exceeding one thousand dollars per mile of the rout- of said road was duly subscribed (being more than one thousand dollars per mile for the whole length of said road) to the capital stock of said company, and the said body corporate was fully organized under said law, and presedent, secretary, treasurer, and board of directors were duly elected by the subscribers to said capi-

tal stock: that said corporate body was organized under the laws of the State of Illinois and was and is located in Illinois and is a citizens thereof.

Orators further — that said body corporate was created for the purpose of constructing and operating a railroad from Mount Vernon, in Jefferson county, in said State, to the Illinois Central railroad or the Chicago Branch thereof, in said State; that by the terms of the 7th section of said act said company was permitted and empowered to borrow such sums of money as it might deem desirable upon such terms as it might agree for the carrying out of the object of said act and provide any security said company might deem best by bond, mortgage, or otherwise; that by the terms of the 8th section of said act the county court of said county of Jefferson was empowered to subscribe for such amount of the capital stock of said company as they might think proper to issue bonds of said county and provide for the payment of the principal and interest thereof by sale or mortgage, one or both, of the swamp and overflowed lands of said county and dispose of such bonds for money to pay or in payment of their subscription to said stock, all and each to be upon such terms, time, and in such mode as they might think best, or they might make such other
611 dispositions of said swamp and overflowed lands in aid of the construction and maintenance of said road as they might deem best for the public interest of said county; that by the 8th section of said act it is provided that "before any disposition is made of said swamp and overflowed lands or any subscription to the stock of said company the county court may at any regular term of said court order a special election to be held for the purpose of taking sense of the qualified voters thereupon, giving such notice thereof as they may deem proper, and which shall be conducted and the returns thereof canvassed in all respects as other county elections. The county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in the constructing of said road, which said proposition shall be printed as an election ticket, and the voters may express their will in said proposition by writing 'yea' & 'nay' in said ticket. Those opposed to any and all propositions or plans may express their dissent by voting 'nay' on a seperate ticket. The proposition or plan having the highest number of voters shall be adopted by the county court, provided a majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election;" that by section 10 of said act it is further provided that any county through which said road may run and any county through which any of the railroad may run with which this road may be joined, connected, or intersected may —, and are hereby, authorized and empowered to aid in the construction of the same or such other road with which it may so connect, and for this purpose the provision of the 7th, 8th, & 9th sections of this act shall extend, include, and be applicable to every such county & every such railroad.

Orators further show unto your honors that by virtue of a certain other act passed by the General Assembly of the State of Illinois, approved February 15th, 1855, entitled "An act to incorporate the Belleville & Fairfield Railroad Company," a certain other body corporate and politic was created for the purpose of construct-
612 ing and maintaining a railroad from Belleville, in the county of St. Clair, in said State, and running from thence by Nashville, in Washington county, and Mount Vernon, in Jefferson county, to Fairfield, in Wayne county, in said State; that under said act of incorporation said company was afterwards fully organized, and a president, secretary, and board of directors were duly elected; and orators bed — to refer to said act, and that the same be taken as a part of this bill; and orators further show that about the 19th day of November, A. D. 1855, a certain firm, composed of Isaac T. Vanduser, Norman L. Smith, and Samuel L. Voorhees, doing buisness under the name of Vanduser & Smith, entered into a contract in writing with the county court of said Wayne county (such contract being executed as and for said county court by S. J. R. Wilson, county judge, and Thomas M. Scott, associate judge of said county); that by the terms of said contract said Vanduser & Smith agreed and undertook, on certain terms and conditions in said written instrument specified, to construct and put into operation a railroad from Mount Vernon aforesaid to the eastern bound-ry of Wayne county aforesaid, terminating on the old survey of the Alton, Mount Carmel & New Albany railroad or within one mile thereof; that by the further terms of said agreement said county judge and associate judge, acting for and on behalf of said Wayne county, agreed to pay to said Vanduser, Smith & Co. for construction of said road certain sums of money, which might be liquidated by the conveyance of certain lands belonging to the county of Wayne at the rate of five dollars per acre.

And orators show that said contract was duly approved by said county court at a special term thereof held in the month of December, A. D. 1858.

And orators file herewith a copy of said written agreement, marked "Exhibit A," and pray that the same may be taken as a part of this bill.

And orators further show that about the time of the execution of said agreement said Vanduser, Smith & Co. entered into an agreement with the Mount Vernon Railroad Company for the construction by said firm of the whole or some part of the said Mount
613 Vernon railroad; that said Vanduser, Smith & Co. entered upon the construction of said railroad agreed to be built by said firm with the said county court, but af-erwards ceased to prosecute said work, and assigned and transfer-ed to said Mount Vernon Railroad Company the said written contract with the county court of Wayne county aforesaid; that said Mount Vernon Railroad Company, in pursuance of a resolution passed by the board of directors, obtained from said Vanduser, Smith & Co. an assignment of boath said contracts for construction, to wit, one with the said county court of Wayne county and one with said Mount Vernon Railroad

Company; and orators further show that before the 20th day of April, A. D. 1859, that portion of the said Belleville and Fairfield railroad lying between Mount Vernon and the east line of Wayne county was surveyed and located, and the said Mount Vernon railroad was also surveyed and located from Mount Vernon westward to the Illinois Central railroad; that the line of said Mount Vernon railroad as surveyed and located connected and intersected with the line of the Belleville and Fairfield as located, to wit, at Mount Vernon, and at said last-named place said roads became links in a chain of railroad connection as contemplated and provided for in the charter of said Mount Vernon Railroad Company.

And orators further show that after the organization of said two railroad companies under the charters aforesaid, to wit, about the month of April, A. D. 1855, the presidents and boards of directors of both companies met at the office of the Mount Vernon Company, in Mount Vernon aforesaid, and by a mutual agreement of both companies, under and by virtue of the laws of the State of Illinois, the said roads were joined, connected, & intersected, and said roads were by said agreements so joined, connected, and intersected as to form one road from the east line of Wayne county to Mount Vernon aforesaid; that by said agreement both of said roads were joined and said companies consolidated under the name of Mount Vernon Railroad Company, and said boards of directors and said companies did then and there elect a joint board of directors and president, secretary, & treasurer for said consolidated companies.

614 Orators further show unto your honors that by reason of the connection and intersection of said Mourt Vernon railroad and Belleville & Fairfield railroads as originally chartered and as surveyed and located, and also by reason of the consolidation of said compaines as aforesaid, the said county court of Wayne county, in the year A. D. 1855, acquired all the rights, powers, and privileges granted and specified in the 7th, 8th, 9th, & 10th sections of the charter of the Mount Vernon Railroad Company aforesaid, and had the right to aid in the construction of both or either of said roads, and to dispose of the swamp and overflowed lands of Wayne county for that purpose, subject to the conditions and limitations of said sections; and by virtue of the power specified in said sections said county court, in said year A. D. 1855, became and was authorized to pledge or mortgage the said swamp lands of said county to aid in the construction of either of said roads by complying with certain conditions set forth in said Mount Vernon railroad charter.

And your orators further show that said county, being desirous of aiding in the construction of a railroad across said county of Wayne, and said consolidated companies contemplating the immediate construction of such road, and said county being then the owner of a large quantity of lands granted to said county by the State of Illinois and to said State by the United States, and known as swamp and overflowed lands, by an order made and entered at a special term of said court, held on the 28th day of September, A. D. 1855, at Fairfield, in said county, directed a special election

to be held in said county of Wayne on the 5th day of November, A. D. 1855, for the purpose of taking the sence of the qualified voters of said county upon mortgaging or appropriating that portion of swamp & overflowed lands situated in said county and hereinafter described to any company that would build a railroad through said county of Wayne, and the said county court did then and there order public notice of such special election to be given by advertisement, in accordance with the statute laws of said State of Illinois, and said notice was given in conformity with the terms and provisions of said order, and the said county court did prepare a
615 proposition containing a brief, clear, and distinct idea of the plan proposed for aiding in constructing said road, and did cause the said proposition to be printed at large as an election ticket, and furnished to the qualified voters of said county to be used at said election, in the words and figures following, to wit, "For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through said county;" "Aga-nst the same," and said special election was duly held, pursuant to said notice, on the 5th day of November, A. D. 1855, and conducted in all things in conformity with the provisions of the aforesaid charter of the Mount Vernon Railroad Company and the laws of the State of Illinois, and the returns thereof made, canvassed, & published in all respects as other county elections are to be in and by said laws. Orators further show that said proposition or plan above stated received the highest number of votes and a majority of all the votes given at said election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea" in favor of said proposition so to appropriate said lands, and upon the returns of said election being duly canvassed and published the said county court did adopt the plan or proposition carried as aforesaid, and did adjudge and determine to execute a mortgage upon said swamp and overflowed lands for the purpose aforesaid; and orators further show unto your honors that on the 20th day of April, A. D. 1859, said Mount Vernon Railroad Company, for the purpose of raising money to build and complete said railroad and branches authorized by said act of incorporation, and for the purpose of purchasing iron and materials and the payment of the expenses thereof, made and executed six hundred bonds of one thousand dollars each and four hundred bonds of five hundred dollars each, all made payable to Isaac Seymour or bearer, payable at the Bank of North America, at New York city, on the first day of May, A. D. 1874, with interest thereon, at the rate of seven per cent. per annum, semi-annually, on the first day of May and November of each year until said principal should be paid, and that each of the said bonds had attached thereto coupons or interest warrants covering the whole amount of interest to become
616 due till the maturity of said bonds, payable at the Bank of North America aforesaid, each of said coupons or warrants specifying the interest for one-half year on the bond to which it was attached, and also the time when such half-yearly interest would become due and payable; that each of said bonds was duly executed

by the president and treasurer of the said Mount Vernon Railroad Company and the seal of said body corporate attached thereto, and each of said interest warrants so attached to said bonds was signed by the secretary of said company; that it was specified on the face of each of said bonds that full payment of the principal and interest of the whole issue of said bonds was secured by a mortgage, bearing even date with said bonds, to the said Isaac Seymour, as trustee, of one hundred thousand acres of land in Wayne county, in the State of Illinois, granted by the State and county for the purpose of constructing said railroad; that said one-thousand-dollar bonds were numbered from one to six hundred, both inclusive, and said five-hundred-dollar bonds were numbered from one to four hundred, both inclusive, and all said bonds were issued under a resolution passed by the board of directors of said Mount Vernon Railroad Company on the first day of March, A. D. 1859.

And orators further show unto your honors that the county court of Wayne county aforesaid, being desirous of aiding in the construction of a railroad running through said county, and said county being the owner of a large quantity of swamp and overflowed lands (donated thereto by the State of Illinois as aforesaid), resolved to mortgage and pledge the same to secure the payment of the principal and interest of the bonds aforesaid; that on the 20th day of April, A. D. 1859, said county court had full authority in law so to dispose of said lands, such authority being derived from the following seperate sources, to wit:

First. From the general public laws of the State of Illinois, then in full force.

Second. From the 7th, 8th, 9th, & 10th sections of the aforesaid act incorporating the Mount Vernon Railroad Company aforesaid and the connection and intersection of said road as surveyed
617 and located with the Belleville and Fairfield railroad as surveyed and located.

Third. From the consolidation and union of the said two railroads aforesaid, as hereinbefore stated; and, so being possessed of full authority in the premises, the county judge and one of the associate judges of the county of Wayne did, on the 20th day of April, A. D. 1859, execute and deliver to the said Isaac Seymour a certain deed of trust and a certain mortgage to said Seymour, copies of which said deed of trust and mortgage are filed with the original bill in this cause and prayed to be taken as a part of this amended bill; that said deed and mortgage were in fact made for the purpose of securing the payment of the principal and interest specified in said bonds and interest warrants aforesaid, and that said deed of trust and mortgage were so executed by said county judge and associate judge on behalf of said county, and, by virtue of the lawful authority of said county court so to dispose of said swamp and overflowed lands, show that—a special term of said county court held in said month of April, A. D. 1859, that said mortgage and trust deeds were fully approved by said court and became and were and are in equity the deed of said Wayne county, and the same were duly acknowledged and filed for record in the office of the circuit clerk and

recorder of said county on the 3d day May, A. D. 1859, and are duly recorded in said office, and said respondents, all and each, every of them, are required to answer upon oath specifically, to the best of their knowledge, information, and belief, whether said instrument- were executed and approved and recorded as aforesaid, and whether the said copies thereof filed as exhibits herein, as aforesaid, are true and perfect copies of the same.

Show that, said bonds being so executed, your orators became severally purchasers of a number of the same and of said interest warrants, as set forth hereinafter, in good faith and for a good and valuable consideration, relying upon the security aforesaid; that neither said sums of money specified in said bonds nor the sums specified in said warrants or any part thereof have been paid, but that before the commencement of this suit a sum gr-ater than one year's interest on all the bonds issued as aforesaid had become due and
618 payable and still remains wholly due and unpaid.

Orators further charge, upon information and belief, that all bonds aforesaid have long since been disposed of by said Seymour or said company, but orators do not know and have no means of knowing who are the holders or owners of any of said bonds, except those held by orators; and orators pray that the holders of said bonds or any of them not joined in this proceeding as complainants may be permitted, when discovered, to become complainants and to have the relief herein prayed for, upon such terms as to your honors shall seem just and equitable.

Orators further show that before the commencement of this suit, but at what exact time orators do not know, said Isaac Seymour departed this life; that in his lifetime said Seymour failed and neglected to execute the trust created by said trust deed and mortgage, and did not dispose of any of such lands or pay any part of said indebtedness as required by said instruments; that by the reason of the death of said Seymour the said trusts have become incapable of execution without the aid of this court.

And orators file herewith copies of said trust deed and mortgage and pray that the same may be taken as a part of this bill; that all the defendents be required to answer specifically the allegations of this bill, according to the rules of practice of this honorable court.

And orators here set out the number, amount, and character of the bonds and interest warrants aforesaid held by each of your orators; that from original purchasers of said bonds your orators, John W. Kennicott, became the *bona fide* holder and owner of the following bonds for the sum of five hunderd dollars, with the interest warrants thereto attached, to wit, bonds numbered 14, 15, 34, 212, 252, & 254, and there is now due and unpaid on said bonds twelve annual instalments of interest.

Your orator, Thomas Upham, is the *bona fide* owner & holder of said bonds for one thousand dollars each, number- 471, 460,
619 & bonds for five hunderd dollars each, numbered 113, 226, & 234, & that there is now due and unpaid on said bonds twelve semi-annual instalments of interest.

Your orator, Ebenezer W. Stone, is the *bona fide* owner & holder

of said bonds numbered 353, for the sum of five hunderd dollars, & there is due & unpaid on said bonds twelve semi-annual instalments of interest.

Your orator, Joseph W. Ward, is the *bona fide* owner & holder of the following numbered bonds for $500 each: Nos. 45, 48, 40, 41, 374, 375; and for one thousand dollars each, Nos. 352, 357, 372, 351, 356, 358, & 402, and there is due and unpaid on said bonds twelve semi-annual instalments of interest.

Your orator, Austin Myers, is the *bona fide* owner and holder of the following bonds for the sums set forth to said numbers:

No.	93 for $1,000.	No.	91 for $1,000.
"	94 " $1,000.	"	92 " $1,000.
"	95 " $1,000.	"	97 " $1,000.
"	96 " $1,000.	"	98 " $1,000.
"	169 " $1,000.	"	99 " $1,000.
"	100 " $1,000.		

Bonds numbered from 152 to 174, inclusive, of $1,000 each; also bonds numbered from 221 to 250, inclusive, for $1,000, on which bonds there is now due and unpaid twelve semi-annual instalments of interest.

Your orator, Joseph W. Ward, is the further owner and holder of the following bonds for one thousand dollars each, to wit: Numbers 386, 359, 268, 409, 130, 388, 395, 397, 405, 323, 436, 408, 59, 390, 396, 404, 406; & bonds for $500 each, #279, 280, 281, 282, 400; for $500 each, numbered 368, 366, 364, 362, 360, 358, 353, 43, 369, 19, 251, 365, 363, 361, 359, 355, 230, 93, and 267, 407; & 56, 276, for one thousand dollars; that there is now due and unpaid twelve semi-annual instalments of interest on each of said bonds; that there is now due a large amount of coupons or interest warrants attached to each of the said bonds held by your orators, and
620 demand has been made for the payment of said interest.

Your orator, John H. Brown, is the *bona fide* owner and holder of the said bonds for one thousand dollars each, number- as follows: 119, 120, 144, 258, 344, 318, 319, 320, 322, 413, & 459; and for five hundred dollars each, number-d as follows: 51, 52, 53, 54, 55, 56, 57, 58, 59, 247, 266, 268, 383, 385, 390, 391, 395, 97, 287, & 387, and the interest coupons thereto attached, respectively, and there are now due and unpaid seventeen semi-annual instalments of interest on each of the said bonds, for which demands have been duly made.

Your orator, Morris J. Earl, is the *bona fide* owner and holder of the said bonds for one thousand dollars each, numbered respectively 495, 514, 553, 556, 570, 572, & 574; and for five hunderd dollars each, numbered respectively 305, 306, 307, 308, & 309, and the interest coupons thereto attached respectively, and that there are now due and unpaid seventeen semi-annual instalments of interest on each of said bonds, for which demands have been duly made.

Your orator, Cyrus Wakefield, is the *bona fide* owner and holder of the said bonds for $1,000 each, numbered respectively 117, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205,

206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 325, 326, 327, 342, 424, 425, 426, 427, & 429; and for five hundred dollars each, numbered 35, with the interest & coupons thereto attached, and that there are now due and unpaid nineteen semi-annual instalments of interest on each of said bonds, for which demands have been duly made.

Your orator, the said William R. Hodges, is the *bona fide* owner and holder of the said bonds for $1,000 each, respectively number-d 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 596, 595, 597, 598, 599, 600; and for $500 each, number-d respectively 119, 126, 223, 233, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 255, 299, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 350, with the interest warrants or coupons thereto attached; and there are now due and unpaid twenty-eight semi-annual instalments of interest on each of said bonds,
621 for which demands have been duly made.

And your orator, the said William R. Hodges, further showeth that he is the *bona fide* owner and holder of certain other interest warrants or coupons nominally amounting to the sum of thirty thousand dollars; that the said warrants were originally attached to but are now detached from other of said bonds; that the payment of the said warrants was and is secured in like manner as aforesaid; that the same are now due and unpaid, and that demand has been duly made for the payment thereof, which said warrants will be produced upon the hearing of this cause.

And orators pray that, on the final hearing herein, your honors will order, adjudge, and decree them an account to be taken of the amount due orators, respectively, on said bonds and warrants; that a trustee be appointed by the court to execute the powers confer-ed by said mortgage and deed of trust; that said trustee proceed to sell so much of said lands as shall be required to pay the sums due orators, and that orators have such other and further relief in the premises as unto your honors may seem consistent with equity and good conscience.

And orators will ever pray.

SCATES, McLERNDON & BROADWELL &
HAY, GREEN & LITTLER,
Solicitors for Complainants.

(Indorsed:) Filed Jan'y 17th, 1870. J. A. Jones, clerk.

622 Ex. "B."

Contract of Van Duser, Smith & Co. with County of Wayne.

ISAAC T. VAN DUSER & Others
vs.
SAMUEL J. R. WILSON & THOMAS M. SCOTT.

Articles of agreement, made and entered into this nineteenth day

of November, in the year of our Lord one thousand eight hundred and fifty-eight, between Isaac T. Van Duser, of Versailles, Illinois, and Norman A. Smith, of the city of Troy and State of New York, Barnard L. Vorhees, of St. Louis, State of Missouri, doing business in the name, style, and firm of Van Duser, Smith and Company, parties of the first part, and Samuel J. R. Wilson, county judge of, and Thomas M. Scott, associate justice of, the county court of Wayne county, State of Illinois, on behalf of the said county of Wayne, party of the second part, witnesseth:

That, in consideration of the covenants made and entered into by the said party of the second part, it is agreed and covenanted by the said party of the first part to and with the party of the second part hereto that they, the said party of the first part, will commence the construction of a first-class single-track railroad at Fairfield,
623 Wayne county, State of Illinois, within ninety days from the sealing and delivering of this agreement, and that they will, with all convenient dispatch, prosecute, finish, and complete the same from Mount Vernon, Jefferson county, to the eastern boundary of Wayne county, terminating on the old survey of the Alton, Mount Carmel and New Albany railroad or within one mile thereof, in a substantial and workmanlike manner, and equip and operate the same between the two said points within the time of two years from the sealing and delivering thereof, and that they will furnish all necessary means, material, &c., to construct, finish, and complete a first-class railroad in all and every respect whatsoever with a T rail of not less than forty-five pounds to the lineal yard of said track, and that they will furnish or cause to be furnished and keep and provide at all times as many locomotives, passenger, freight, and flat cars as may be demanded by and required to transact all business presented to be done on the same at the several depots and station-houses along the line of said road, and to run at least one train of passenger and freight cars each way every day for the term
624 of twenty years from the completion of said road.

That they will erect as many depots, freight-houses, and station-houses, not less than three, in Wayne county as may be necessary for the convenience of public business, with sufficient side track for such purpose, for and in consideration of the covenant and agreement on the part of the party of the first part to be performed.

It is covenanted and agreed to and with the said party of first part by the party of the second part that they will pay or cause to be paid to the said party of the first part the sum of five hundred thousand dollars, which it is agreed by the said parties hereto may be paid or liquidated by the conveyance of good and sufficient covenants of warrantees to lands belonging to and situated in the county of Wayne at the rate of five dollars per acre for each and every acre so conveyed.

It is further covenanted and agreed by the said party of the second part, in consideration of the covenant to be performed by the said party of the first part, that whenever and as often as the said party of the first part shall have built and completed the grade, in-

cluding the masonry and bridging, on any three miles of the
625 said railroad in Wayne county, then the said party of the second part shall thereupon immediately pay to the said party of the first part the sum of twelve thousand five hundred dollars, which said sum may be paid or liquidated in lands belonging to and lying in Wayne county at five dollars per acre, which lands shall be conveyed to the said party of the first part by the said party of the second part by good and sufficient deed in fee simple, with covenants of warranty, and so on from time to time, as the party of the first part shall complete three miles of said grade in said Wayne county as aforesaid, said party of the second part shall pay to the party of the first part the sum of twelve thousand five hundred dollars, which may be liquidated by land as aforesaid, until the whole of said grade, culverts, and bridging shall be completed in said Wayne county as aforesaid, and, after all of said grade is completed in Wayne county, so on in like manner until the whole grade is completed from the eastern boundary of Wayne to Mt. Vernon, in Jefferson county.

It is further agreed and understood by both the contracting parties hereto that upon the said party of the first part giving
626 good and sufficient security, to be approved by the said second party, that then and in that case the said party of the second part shall pay to said party of the first part the remainder of the aforesaid sum of five hundred thousand dollars, which said sum as remainder of said five hundred thousand dollars the said party of the second part may also pay and liquidate in lands belonging to and laying in Wayne county at five dollars per acre as aforesaid.

It is further agreed and understood by and between said parties that in case said party of the first part do- not give security and receive said monies in advance of the completion of any part of the superstructure of said road that the remainder of said monies to be paid shall be paid in the following manner—that is to say: Upon the laying down and completion of one mile of railroad in Wayne county said party of the second part agrees to pay as aforesaid to said parties of the first part six thousand dollars for each and every mile of said road on which the superstructure and iron is laid as said work progresses until the completion thereof from the town of Fairfield, in Wayne county, to
627 Mt. Vernon, in Jefferson county, and from the town of Fairfield to the eastern boundary of Wayne county, and upon completing said superstructure and the running the first train of cars over said road from Mount Vernon, in Jefferson county, to the eastern boundary of Wayne county, then and in that case the party of the second part shall immediately pay to the party of the first part the remainder of said five hundred thousand dollars, which may be paid in county lands at five dollars per acre as aforesaid, and upon the completion of said superstructure and grade and the running of the first train of cars over the said road as aforesaid the said party of the second part covenants and agrees, after using all due diligence, by S. J. R. Wilson, agent, of the State of

Illinois, on the part of Wayne county, to collect from the United States the amount due said county of Wayne, either in land warrants or money for lands entered at the United States land office after the act of Congress approved on the twenty-eighth day of September, A. D. 1850, that they will transfer and pay over the same to the said party of the first part, after deducting therefrom an amount sufficient to pay the expenses of selecting and
628 surveying the lands immuring to said county under said act of Congress and deducting all reasonable charges and expenses of taking proof as to the character of said lands and the title of said county thereto and collecting said monies.

It is further agreed and understood by and between said parties that in case the said party of the second part shall, as the said monies or any portion thereof fall due, pay or liquidate the same in lands belonging to and laying in said Wayne county, then and in that case the mode of selecting said lands shall be as follows:

The said party of the first part shall select one-half of said tracts and the party of the second part shall select the other half.

It is further covenanted and agreed by the said party of the second part that they will procure and cause to be conveyed to the party of the first part a right of way in Wayne county one hundred feet wide on such line of location as may be adopted by said party of the first part, so far as can be obtained by donation or purchase, and in case the owner on any part of said line will not donate or volun-
629 tarily sell the same and — is taken by condemnation the said party of the second part will pay all damages, expenses, and cost of condemnation and save *and* said party of the first part free from expense or cost on account of the same.

And the said party of the second part further covenants and agrees to procure in like manner by donation, purchase, or condemnation and alike free from expense to the said party of the first part a quantity of ground of not more than three acres at every station for depot purposes, which said quantity may be laid off in such form as the said party of the first part shall choose and direct.

And it is further agreed and understood by the said parties hereto that any and all detentions in the prosecution of said road to completion through Wayne county occasioned by delay in procuring the right of way and the assignment of the charter for said railroad on the part of the said party of the second part, or a non-fulfillment on their part of any portion of this contract, shall be held as an extension of time for the completion of said road.

630 It is further agreed and understood between the said parties that if the said party of the first part shall fail to complete their contract with the party of the second part by refusing or neglecting to finish, complete, or operate said railroad, then all work and superstructure made or caused to be made by them shall revert to the party of the second part, together with the franchises and right of way.

It is further understood and agreed by the contracting parties hereto that in case the parties of the second part shall desire to have the time of commencing the work on said road extended for any

time not exceeding one year, that then and in that case the party of the first part hereby covenants and agrees that the time of commencing said work shall be delayed for any time not exceeding one year by the party of the second part giving to the party of the first part thirty days' notice before the expiration of ninety days from the date of this contract.

It is further agreed by the contracting parties hereto that the parties of the first part are to accept and receive from the parties of the second part any lands in Wayne county which the party of
631 the second part shall convey by good and sufficient deed, with covenants of warrantee, as a compliance *of* the aforesaid contract to convey land.

It is further agreed by the said party of the first part that they will erect one sufficient depot on said railroad within six hundred yards of the court-house in Fairfield, the county-seat of Wayne county, with sufficient depot buildings, station-houses, side tracks, and one suitable and convenient depot east of the Little Wabash and west of the Skillet Forks in said county of Wayne.

It is further agreed between said parties that the parties of the first part shall, twenty days before presenting their claims to the party of the second part for any portion of the monies which may be due the parties of the first part on the aforesaid contract, notify the parties *the party* of the second part of their intention and of the amount which will be due.

And it is further agreed and understood between the said contracting parties that in the event of the said party of the first part completing and running the cars on the railroad from Mt. Vernon, in Jefferson county, to Fairfield, in Wayne county, by the
632 fifth of December, A. D. 1859, then and in that event the said party of the second part will, in addition to the said amount above contracted to be paid, convey to the said party of the first part all the lands that may belong to the said county of Wayne after deducting the amount of one hundred thousand acres, which said lands are to be conveyed after the completion of said railroad from the eastern boundary of Wayne county to Mt. Vernon, in Jefferson county.

It is further agreed by said contracting parties that in the event of said railroad running over any of the lands belonging to either of said parties they shall grant a free right of way over the same without charge or cost.

ISAAC T. VANDOOZER, [SEAL.]
By B. L. VOORHEES, *Att'y*,

Witness:
GEORGE G. ROCKWOOD.

N. A. SMITH, [SEAL.]
By B. L. VOORHEES, *Att'y*,

Witness:
R. L. BOGGS.

B. L. VOOREEES, [SEAL.]
Parties of the First Part.
S. J. R. WILSON, [SEAL.]
THOMAS M. SCOTT, [SEAL.]
County Court.

633 *Continuation of the Foregoing Agreement.*

It is further agreed by the parties of the first part that if the parties of the second part raise by mortgage of the county lands one hundred and fifty thousand dollars, to be paid to the parties of the first part in the same proportion as the land—*i. e.*, as fast as the work progresses—at the rate of $5 per acre, then the parties of the first part will not ask any further payment from the county until they run a train of cars from Mt. Vernon to Fairfield; then the parties of the second part shall deed or cause to be deeded to the parties of the first part the proportion of the land called for in the contract.

It is further agreed by the parties of the first part that if money is raised by mortgage on the county lands by the parties of the second part that they of the first part shall receive the lands with the incumbrance thereon, and to be cleared by them without additional expense to the county—

Provided that all monies raised on said lands is for the use and is paid to the parties of the first part.

Fairfield, Dec. 27th, 1858.

634 I. F. VANDUZER,
By B. L. VOORHEES, *Att'y.*
N. A. SMITH,
By B. L. VOORHEES, *Att'y.*

Contract Continued.

It is further agreed by the said party of the first part that they will, sixty days before applying for any payments, in the event that lands have to be sold by said county court to make payments on this contract, select one-half of the lands so to be sold and give the county court notice thereof, and shall bid for each tract of such land ($5) five dollars per acre, and said second parties agree that if any of said lands shall sell for more than five dollars per acre the said first parties shall be entitled to the excess over that sum.

I. T. VANDUZER,
By B. L. VOORHEES, *Att'y.*
N. A. SMITH,
By B. L. VOORHEES, *Att'y.*

635 DEF'TS' EX. "G."

Order of Board of Supervisors of Wayne Co.

Exhibit G.

Board of supervisors. March term, A. D. 1860.

MARCH 9TH, 1860.

Present: S. J. R. Wilson, county judge; Thomas M. Scott, associate; William Irwin, associate.

On Friday, being the 5th day of the term, it is ordered by the

court that the contract with Vanduzer, Smith & Co., entered into by Wayne county, of the one part, and Vanduzer, Smith & Co., of the second part, on the 19th day of November, A. D. 1858, for the completion and construction of a railroad through said Wayne county, be so amended as to give the said Vanduzer, Smith & Co. or their assigns an extension of ten months in which to complete said railroad to Fairfield, in addition to the time mentioned and specified in said original contract, and also an extension of eighteen months in addition to the time mentioned and specified in said original contract for the completion of said railroad to the eastern line of said county; and said Wayne county hereby agrees to faith-
636 fully execute and perform all the covenants, conditions, agreements, and stipulations mentioned in said original contract to be performed by and in behalf of said Wayne county unto said Vanduzer, Smith & Co. or their assigns in case said Vanduzer, Smith & Co. or their assigns shall have said railroad completed to Fairfield by the 19th day of September, A. D. 1861, and to the eastern line of said Wayne caunty by the 19th day of May, A. D. 1862, as fully in every respect as though said railroad had been completed to Fairfield by the 25th day — December, A. D. 1859, and to the eastern line of said Wayne county by the 19th day of November, A. D. 1860, as stipulated in said original contract.

This extension is made upon this express condition: That said Vanduzer, Smith & Co. or their assigns furnish to S. J. R. Wilson, county judge of said Wayne county, a plat of the located line through said Wayne county as far as Fairfield by the 15th day of April, A. D. 1860, and make a *bona fide* commencement of the grading in said Wayne county on said line by the 15th day of May, A. D. 1860, and keep at least fifty hands employed at said grad-
637 ing in Wayne county for the space of six months; and after the expiration of said six months from said time of commencing said grading said Vanduzer, Smith & Co. or their assigns shall have and keep employed at said grading upon said line at least one hundred hands, unless prevented by the inclemency of the weather.

And in case said Vanduzer, Smith & Co. or their assigns shall fail to keep said hands employed upon said line at said grading as aforesaid until said grading is completed, for the space of one month, unless prevented by the inclemency of the weather as aforesaid, or shall fail to keep and perform any of the other conditions of this supplement, then this order and everything herein contained shall cease and be null and void; otherwise to remain in full force and effect.

S. J. R. WILSON,
County Judge.
THOMAS M. SCOTT.
WILLIAM IRWIN.

STATE OF ILLINOIS, } ss:
Wayne County, }

I, J. E. Wilson, clerk of the county court, do hereby certify

638 that the above is a true and correct copy of an order passed by the board of supervisors at their March session, A. D. 1860, as appears of record in my office.

In witness whereof I have hereunto set my hand and [SEAL.] official seal this 30th day of June, A. D. 1885.

J. E. WILSON,
County Clerk.

639 DEF'TS' EX. "H."

Proceedings in U. S. Court in "Kennicott" Case.

Exhibit H.

MONDAY, *June 1st, A. D.* 1868.

Present: The Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT *et al.*
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE *et al.* } In Chancery.

Now again come the complainants, by their solicitors, Messrs. Weldon, Hay and Cullom and Walter B. Scates, Esq.; and the defendant, The Mt. Vernon Railroad Company, having been regularly served with process herein and having failed to enter its appearance herein or answer complainants' bill herein in accordance with the rules and practices of this court, it is therefore ordered and adjudged by the court that the default of the said defendant be, and the same is hereby, entered accordingly of record and the complainants' bill be taken *pro confesso* against the said defendant.

Whereupon, on motion of the complainant, it is ordered that this cause be referred to the master in chancery of this court to compute the amount due by said defendant to the said complainant and make report thereof to this court.

THURSDAY, *June 18th, A. D.* 1868.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT and Others
vs.
THE BOARD OF SUPERVISORS OF WAYNE COUNTY and THE MOUNT VERNON R. R. COMPANY. } In Chancery.

Now, on this day, comes Antrim Campbell, Esq., the master in chancery of this court to whom was referred this cause to compute the amount due by the board of supervisors of Wayne county upon the bonds of the Mount Vernon Railroad Company, and presented his report to the court, which is approved and ordered to be filed.

640 JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER STONE, and JOSEPH W. WARD *et al.*
vs.
THE MT. VERNON R. R. COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLI. } In Chancery.

This cause came on to be heard at this term of this court, the said bill of complaint filed in this cause having been taken as confessed by said Mount Vernon Railroad Company, impleaded, &c., and one of the defendants in this suit; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that it be referred to a master to inquire and state the amount due the said complainants upon the bond- and coupons set forth and described in said bill of complaint, for principal and interest, and it is ordered that the said defendant, The Mount Vernon Railroad Company, do pay the plaintiffs what the said master shall find due for principal and interest and costs as aforesaid, to wit, the sum of sixty-three thousand *dollars* six hundred and eighty-eight $\frac{49}{100}$ dollars ($73,688.49) and the costs of this suit, within five days after the said master shall have made his report; and, in default of the defendant, said Mount Vernon Railroad Company, so paying to the plaintiffs what shall be found due to them for principal and interest and costs as aforesaid by the time aforesaid, it is ordered that the said premises, to wit, the railroad of the Mount Vernon Railroad Company, constructed from the village of Ashley, Washington county, to the eastern boundary of Wayne county, in the State of Illinois, together with all its, said company's, real estate, lands, tenements, and hereditaments acquired and appropriated for the purpose of a right of way for a single or double track railroad, and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures, and also all and every privilege, franchise, and right of said Mount Vernon Railroad Company acquired at the date of the mortgage set forth in said bill, executed by it to said Isaac Seymour, trustee, or that it at any time thereafter may have acquired, and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of it, the said defendant, wheresoever and whatsoever now owned by it, and which said property, rights, and franchises were conveyed by said defendant to said Isaac Seymour in trust, and also all benefits and equity of redemption
641 of the said defendants, as is fully set forth in said bill of complaint, be sold at public vendue, at the court-house door, in the city of Springfield, Illinois, by Antrim Campbell, Esq., the master of this court, to the best purchaser or purchasers that can be got for the same, to be allowed by the said master; that such sale so made by the said master shall have the same force and effect as though said sale had been duly made by the trustee named in said mortgage upon a foreclosure made by him of the same under powers contained in said mortgage; that the moneys arising from

such sale be paid to the solicitors of the complainants to apply upon the principal, interest, and costs reported by said master as due said plaintiffs; that upon the sale of the said above-described premises the master shall execute and deliver to the purchaser or purchasers thereof sufficient deed or deeds of sale of the same; that said master shall, before he makes sale thereof, give public notice of such sale for at least six weeks in a public newspaper printed at Springfield, Illinois.

And the court doth reserve the consideration of all further directions until after the said master shall have made his report.

And this cause is continued.

MONDAY, *September 8th, A. D.* 1868.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER W. STONE, JOSEPH W. WARD, and AUSTIN MEYERS
vs.
THE MOUNT VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY. } In Chancery.

Now, on this day, comes the master in chancery of this court and files his report of sale herein.

SATURDAY, *January 23rd, A. D.* 1869.

Present: Hon. Samuel H. Treat, district judge.

JOHN W. KENNICOTT *et al.*
vs.
THE MOUNT VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY, ILL. } In Chancery.

Now, on this day, this cause came on to be heard on the exceptions filed to the report of the master herein, and the court, being advised in the premises, is of opinion that the said exceptions be overruled.

It is further ordered that after payment of the costs and charges of this proceeding that the residue of the purchase-money be paid to the several complainants according to their respective interests.

Ordered also that said report be confirmed and approved.

642 In the Circuit Court of the United States for the Southern District of Illinois.

JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER W. STONE, *et al.*
vs.
MT. VERNON RAILROAD COMPANY, Impleaded with THE BOARD OF SUPERVISORS OF WAYNE COUNTY. } In Chancery.

The undersigned, master of said court, respectfully makes report

to the court that in pursuance of the decree rendered in said entitled cause, at the June term, in the year of our Lord one thousand eight hundred and sixty-eight, of said circuit court (the debt, interest, and costs due in said decree not having been paid according to the provisions thereof), he offered the property therein described for sale, at public auction, to the highest bidder for cash in hand, at the door of the court-house, in the city of Springfield, to wit, the door of the court-house of the circuit court of the United States for the southern district of Illinois, on the 26th day of August, A. D. 1868, at 12 o'clock m., having first given at least six weeks' notice in the Illinois State Register, a newspaper printed and published in the city of Springfield, Illinois, a certified copy of which notice, marked "A," is herewith filed, and the said defendant, The Mount Vernon Railroad Company, bid the sum of six hundred dollars for the said property in said decree and notices described, to wit, the railroad of the Mount Vernon Railroad Company, constructed from the village of Ashley, Washington county, to the eastern boundary of Wayne county, in the State of Illinois, together with all its, said company's, real estate, lands, tenements, and hereditaments acquired and appropriated for the purpose of a right of way for single or double track railroad and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures, and also all and every the privileges, franchises, and rights of the said Mount Vernon Railroad Company acquired at the date of the mortgage set forth
643 in said bill, executed by the said Isaac Seymour, trustee, or that at any time thereafter may have acquired, and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, superstructions, fixtures, privileges, franchises, and rights of the said defendant wheresoever and whatsoever now owned by it.

And the said sum of six hundred dollars being the highest and best bid, therefore the said premises and property were struck off to the said Mount Vernon Railroad Company at that price, and the said master made, executed, and delivered to said company a deed therefor.

All of which is respectfully submitted.

J. A. JONES, *Master.*

Costs of suit	$57 29
Advertisement	15 75
Comm'rs	18 00
	$91 04

644 DEF'TS' EX. "1."

Order of Board of Supervisors to Sell Swamp Lands.

Exhibit I.

December Special Term, A. D. 1862.

DECEMBER 1ST, 1862.

Order to Sell Swamp Lands.

It is hereby ordered that Charles Wood, drainage commissioner, be, and he is hereby, authorized to sell the swamp and overflowed lands at private sale at two dollars per acre, on the following conditions, to wit: Any person that is now living on said swamp lands shall be entitled to file his claim and enter said lands within twelve months from the date of this order, to the exclusion of all others.

Second. The person having improvements on said land shall be entitled to file his claim and enter said lands within twelve months from the date of this order, to the exclusion of all others.

And it is further ordered that any person wishing to purchase any of said lands for actual settlement or cultivation or for the benefit of timber to support their farms shall have the right to deed said land by filing their affidavit to that effect in any quantity not exceeding one hundred and sixty acres, by paying down one-third and the balance in one and two years with six per cent. per annum.

645 And it is further ordered that the drainage commissioner pay all the money that accrues from the sale of said swamp lands, as above stated, and not otherwise appropriated, to the treasurer of the several towns in said county, according to the number of children in each township over the age of five and under twenty-one years, to be used as a school fund for the support of common schools; and it is ordered that said commissioner make an annual report of his acts at the December term of this court.

STATE OF ILLINOIS, } *ss:*
Wayne County, }

I, J. E. Wilson, clerk of the county court — and for said county and State aforesaid, do hereby certify that the above is a true and correct copy of an order passed by the board of supervisors at their December special term, A. D. 1862, as appears of record in my office.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 3rd day of June, A. D. 1885.

J. E. WILSON, *Co. Clerk.*

646 DEF'TS' EX. "L."

Deed of County of Wayne to Thomas Cooper et al.

Exhibit L.

Wayne county
to
Thomas Cooper *et al.*

Whereas by an act of the Congress of the United States of America, approved on the 28th day of September, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," the lands hereinafter mentioned were granted to the State of Illinois; and

Whereas by an act of the Legislature of the State of Illinois, approved on the 22nd day of June, 1852, entitled An act to dispose of the swamp and overflowed lands and to pay the expenses of selecting and surveying the same, and an act amendatory thereto, approved on the 4th day of March, 1854, entitled An act to amend an act entitled An act to dispose of the swamp and overflowed lands and to pay the expenses of selecting and surveying the same, approved June 22nd, 1852, all the lands selected and designated as swamp and overflowed lands, lying and being situated within the county of Wayne and State of Illinois, were granted to the
647 said county of Wayne; and

Whereas at a special term of the county court of the said county of Wayne, in the State of Illinois, began and held, in pursuance of a call of the people of said county, at the court-house, in Fairfield, in said county, on the 20th day of August, 1857, Thomas Cooper, John Moor, C. L. Organ, Sylvester Rider, L. J. S. Turney, Thos. H. Lowrey, John Wilson, John Trousdale, Henry Holshouser, J. J. R. Turney, Samuel Cope, and Edward Bonham made this following proposition to said court, said court then sitting at the county court of said county for the transaction of county business—said proposition is in the words and figures following, as shown by the records of said court, to wit:

FAIRFIELD, *August* 21*st*, 1857.

We, the undersigned, agree to secure the building of a railroad through Wayne county by the way of Fairfield for the swamp and overflowed lands accruing to said county under the several acts of Congress and of the Legislature of the State of Illinois relating thereto, the same to be conveyed to us for that purpose, and the
648 fee simple in said lands to pass to and vest in us at the time and on the consideration hereinafter specified, to wit:

We agree to secure the building of a railroad from Fairfield, so as to connect with some railroad in running operation or with the Great Wabash or Ohio rivers, within three years from this date, with the consideration, however, that if said connection is not made within said three years there shall be an extension of two years from

the expiration of the said term of the said three years in which to form said connection, upon the condition that we pay into the county treasury annually thereafter at the rate of $5,000 per annum until the expiration of said term of two years or until said connection is made as aforesaid; on the completion of which connection, however, either with railroad or river as aforesaid, at any time within the terms above specified, it is expressly understood and agreed by the contracting parties hereto that the fee simple in said lands shall vest in the grantees on their executing to the county court of said county their bond, in the penal sum of $100,000, that they will cause said railroad to be completed through said
649 county within three years thereafter. It is further agreed and understood that we shall have full right upon the commencement of the work on said railroad in Wayne county to use so much of the timber on said lands as is necessary for the construction of said railroad, as well as right of way for said road over said lands.

THOMAS COOPER.
JOHN MOOR.
C. L. ORGAN.
SYLVESTER RYDER.
L. J. S. TURNEY.
THOS. H. LOWREY.
JOHN WILSON.
JOHN TROUSDALE.
HENRY HOULSHOUSER.
J. J. R. TURNEY.
SAMUEL COPE.
EDWARD BONHAM.

And after due consideration of the above proposition it was, on motion of Hooper, justice, ordered and adjudged by the court here that the same be accepted, with this amendment thereto:

That said company agree to pay on the expiration of said term of three years aforesaid (as assessed and liquidated damages *of*) $5,000, five thousand dollars, if they fail to make the connection as specified in said proposition, and in consideration of said forfeit or damages of $5,000 the company mentioned in the above
650 proposition have the right to relinquish said lands to the county, and thereby free themselves from any other forfeit mentioned in said proposition, or agree to pay the two other forfeits of $5,000 per annum, and hold said lands, as specified in said proposition, at the option of the company, reserving, however, to the county the proceeds of so much of said lands as have already been sold by the county.

D. TURNEY.
WILLIAM ELLIS.
SAMUEL HOOPER.

And thereupon came *to* the several persons in the foregoing proposition and filed with the court their acceptance of the proposition as amended by the court, and which acceptance is as follows:

We, the undersigned, — read and considered the terms of acceptance proposed by the county court of Wayne county with reference to the proposition made the county by us relative to the swamped and overflowed lands, and which proposition is filed with said court and recorded among the proceedings of the special term of the county

court, held at Fairfield, commencing on the 20th day of
651 August, 1857, hereby agree to and accept the amendments proposed by the said court, and agree that the original proposition be amended so as to conform to the terms and conditions of the same as amended and accepted by the said court.

Given under our hands and seals this 24th day of August, A. D. 1857.

Thomas Cooper.	[SEAL.]	Henry Houlshouser.	[SEAL.]
John Moor.	[SEAL.]	John Wilson.	[SEAL.]
C. L. Organ.	[SEAL.]	John Trousdale.	[SEAL.]
Sylvester Ryder.	[SEAL.]	J. J. R. Turney.	[SEAL.]
L. J. S. Turney.	[SEAL.]	Samuel Cope.	[SEAL.]
Thos. H. Lowrey.	[SEAL.]	Edward Bonham.	[SEAL.]

And whereas, afterwards at said term of the said county court, to wit, on the 27th day of August, 1857, it was ordered, adjudged, and decreed by said court that a deed be legally executed to Thomas Cooper, John Moor, C. L. Organ, Sylvester Ryder, L. J. S. Turney, Thos. H. Lowrey, John Wilson, John Trousdale, Henry Houlhouser, J. J. R. Turney, Samuel Cope, and Edward Bonham within thirty days thereafter, in pursuance of and in accordance with the beforementioned contract for the swamp and overflowed lands accruing to Wayne county, Illinois, under and by virtue of the said
652 several acts of Congress and of the Legislature of the State of Illinois relating thereto:

Now, therefore, know all men by these presents that I, John Trousdale, clerk of the county court in and for said county of Wayne and State of Illinois, by virtue of the authority in me vested by the last-mentioned act of the Legislature of the State of Illinois, and in pursuance of the order of the county court aforesaid, and in consideration of the premises aforesaid and the further consideration of the sum of one dollar to me in hand paid, the receipt whereof I hereby acknowledge, do grant, bargain and sell, alien, enfeoff, convey, and confirm unto the said Thomas Cooper, John Moor, Sylvester Ryder, C. L. Organ, L. J. S. Turney, Thomas H. Lowrey, John Wilson, John Trousdale, Henry Houlshouser, J. J. R. Turney, Samuel Cope, and Edward Bonham, their heirs and assigns forever, all the swamp and overflowed lands lying and being in the said county of Wayne and accruing to said county under and by virtue of the said several acts of Congress and of the Legislature of the State of Illinois granting said lands, excepting so much of said lands
653 as have been sold to actual settlers on pre-emption previously taken; to have and to hold the said conveyed premises and appurtenances thereunto belonging or in anywise appertaining unto them, the said grantees herein, & their heirs and assigns forever: Provided, nevertheless, and these presents are made upon the express condition, that if the said grantees herein shall fail to make the connection as specified within the time mentioned in said proposition and shall fail to pay the forfeit or damages at the end of each year or any year as set forth in said proposition as having paid all the forfeit or damages mentioned in said proposition as

amended by the court and accepted by the grantees herein, and shall then fail to give the bond of one hundred thousand dollars mentioned in said proposition, then this conveyance and everything herein contained shall cease and be null and void, and the lands herein and hereby conveyed shall revert to and vest in the county of Wayne aforesaid, the same as if this deed had never been made: And provided further, that nothing herein contained shall release the said grantees from their liability to pay said first-men-
654 tioned forfeit of $5,000 in the event of their failing to make the connection at the expiration of the three years as specified in said amended proposition. Said grantees, however, as a further condition herein, agree to secure the building of a suitable depot within the present limits of the town of Fairfield upon the completion of the first link or connection as specified in said proposition, and also to furnish said line or connection of said railroad with a sufficient number of cars and locomotives for the accommodation of passengers and for the transportation of freight.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 26th day of September, A. D. 1857. Interlined before signing.

[SEAL.] JOHN TROUSDALE, *Co. Cl'k.*

Filed 30th September, 1857.

R. B. SLOCUMB, *Cl'k.*

STATE OF ILLINOIS, } ss:
Wayne County, }

655 I, R. E. Mabry, clerk of the circuit court and *ex officio* recorder in and for said county and State, do hereby certify that the above and foregoing is a true and complete copy of the record of a contract between Wayne county and Thos. Cooper *et al.*, as appears of record in Deed Book "K," at page 251, which book is a part of the records of my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Fairfield, this August 5, 1881.

R. E. MABRY, *Clerk.*

(Endorsed:) Filed October 2nd, 1885. J. A. Jones, clerk.

656 DEF'TS' EX. "M."

Abstract of the swamp and overflowed lands within the county of Wayne as returned by the auditor of State, made in pursuance of the act of the Legislature entitled "An act to dispose of the swamp and overflowed lands and to pay the expense of selecting and surveying the same" (except those lands sold to the Springfield and Illinois Southeastern railroad), with the names of the purchasers, the dates of purchase, and description of the lands so purchased.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Ben. Simmons	1 s	5 e	3	N e n e	Nov. 5, '64
Jas. D. Martin	1 s	5 e	3	N w n e	Nov. 17, '65
Same	1 s	5 e	3	S w n e	Nov. 17, '65
Isham Simmons	1 s	5 e	3	S e n e	Nov. 10, '64
Andrew Martin	1 s	5 e	3	S e n w	May 2, 1861
Same	1 s	5 e	3	N e s w	Nov. 17, '65
Same	1 s	5 e	3	N w s w	Nov. 28, '64
Same	1 s	5 e	3	S w s w	Nov. 28, '64
John P. Gillespy	1 s	5 e	3	S e s w	Nov. 17, '65
Thos. J. Ayres	1 s	5 e	3	N w s e	Nov. 16, '65
Needom Helm	1 s	5 e	4	N w n e	Oct. 28, 1864
Andrew Martin	1 s	5 e	4	S w n e	Nov. 28, 1864
Same	1 s	5 e	4	S e n e	May 2, 1861
A. Nicholson	1 s	5 e	4	N e n w	Sep. 1, '64
Isham Simmons	1 s	5 e	4	N w n w	Oct. 23, '64
Same	1 s	5 e	4	S w n w	Oct. 23, '64
Same	1 s	5 e	4	S e n w	Oct. 23, '64
G. W. Wickersham	1 s	5 e	4	N e s w	Sep. 25, '63
Jas. W. Given	1 s	5 e	4	N w s w	Apr. 26, 1859
Same	1 s	5 e	4	S w s w	Apr. 23, 1856
Edward Marshall	1 s	5 e	4	S e s w	June 3, 1857
Andrew Martin	1 s	5 e	4	N e s e	Nov. 28, '64
G. W. Wickersham	1 s	5 e	4	N w s e	Sep. 25, 1863
Edward Marshall	1 s	5 e	4	S w s e	June 3, 1857
Andrew Martin	1 s	5 e	4	S e s e	Nov. 28, '64
C. W. McCormick	1 s	5 e	5	N e n e	Nov. 14, '64
Same	1 s	5 e	5	N w n e	Nov. 14, '64
Same	1 s	5 e	5	S w n e	Nov. 14, '64
Same	1 s	5 e	5	S e n e	Nov. 14, '64
Jas. Henson	1 s	5 e	5	N w s w	June 7, 1858
John Grant	1 s	5 e	5	S w s w	Feb. 25, 1858
Same	1 s	5 e	5	S e s w	Feb. 25, 1858
Elias Cook	1 s	5 e	5	N e s e	Jan. 28, '64
Simeon Gwin	1 s	5 e	5	N w s e	Dec. 14, 1861
Isaac Garrison	1 s	5 e	8	N e n e	Dec. 18, 1863

Def'ts' Ex. "M"—Continued

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	1 s	5 e	8	N w n e	Dec. 18, 1863
Same	1 s	5 e	8	S w n e	Dec. 18, 1863
Same	1 s	5 e	8	N e n w	Aug. 15, 1859
Richard L. Clark	1 s	5 e	8	N w n w	Dec. 17, '63
Ges. Garrison	1 s	5 e	8	N e s e	Dec. 30, '63
Jas. Irwin	1 s	5 e	9	N w n e	June 1, 1857
Same	1 s	5 e	9	S w n e	June 1, 1857
Same	1 s	5 e	9	N e n w	June 1, 1857
Isaac Garrison	1 s	5 e	9	N w n w	Dec. 18, 1863
Same	1 s	5 e	9	S w n w	Dec. 18, 1863
Jas. Irwin	1 s	5 e	9	S e n w	June 1, 1857
Isaac Garrison	1 s	5 e	9	N e s w	Dec. 30, '63
Ges. Garrison	1 s	5 e	9	N w s w	Dec. 30, '63
J. R. Irwin	1 s	5 e	9	N e s e	Aug. 17, '64
Isaac Garrison	1 s	5 e	9	N w s e	Dec. 30, '63
John Milner	1 s	5 e	15	N e n w	Nov. 17, '63
Wm. Keen	1 s	5 e	15	N e s w	Nov. 27, '63
Same	1 s	5 e	15	N w s w	Nov. 27, '63
J. B. Bozarth	1 s	5 e	15	S w s w	July 6, '64
Same	1 s	5 e	22	N w n w	July 6, '64
J. W. Bozarth	1 s	5 e	22	S w n w	June 6, '65
John Keen, Jr.	1 s	5 e	22	N e s w	Jan. 7, '63
S. J. Branson	1 s	5 e	22	N e s e	Oct. 10, 1863
Same	1 s	5 e	22	S e s e	Oct. 10, 1863
John Keen, Jr.	1 s	5 e	23	S w n w	Dec. 4, '63
John Keen	1 s	5 e	23	N w s w	Oct. 24, '63
S. J. Branson	1 s	5 e	23	S w s w	Oct. 10, 1863
A. K. Atteberry	1 s	5 e	25	N w s w	Oct. 27, 1863
A. F. Atteberry	1 s	5 e	25	S w s w	Oct. 27, 1863
D. H. Clevinger	1 s	5 e	25	N e s e	Feb. 3, '64
Same	1 s	5 e	25	N w s e	Sep. 11, 1866
Same	1 s	5 e	25	S e s e	Feb. 3, '64
M. W. Rodgers	1 s	5 e	26	S w n e	Nov. 17, '63
John M. Reed	1 s	5 e	26	N e n w	Oct. 3, '63
Same	1 s	5 e	26	N w n w	Oct. 3, '63
M. W. Rodgers	1 s	5 e	26	S e n w	Nov. 17, '63
Same	1 s	5 e	26	N e s w	Nov. 17, '63
A. K. Atteberry	1 s	5 e	26	S e s w	Oct. 24, '63
F. M. Atteberry	1 s	5 e	26	N e s e	Oct. 27, '63
M. W. Rodgers	1 s	5 e	26	N w s e	Nov. 17, '63
A. K. Atteberry	1 s	5 e	26	S w s e	Oct. 27, 1863
F. M. Atteberry	1 s	5 e	26	S e s e	Oct. 27, 1863
Wesley Gregory	1 s	5 e	31	N w s w	M'ch 28, 1860
Wm. R. Wiggins	1 s	5 e	31	S w s w	July 15, '64
Same	1 s	5 e	31	S e s w	July 15, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Patrick Galaspy	1 s	5 e	35	N e n e	Dec. 4, '66
A. K. Atteberry	1 s	5 e	35	S e n e	Oct. 13, '63
Stout Atteberry	1 s	5 e	35	N e n w	Oct. 13, '63
A. K. Atteberry	1 s	5 e	35	N e s e	Oct. 13, '63
F. M. Atteberry	1 s	5 e	35	N w s e	Oct. 24, '63
Same	1 s	5 e	35	S w s e	Oct. 24, '63
W. J. Harlan	1 s	5 e	36	N e n e	Oct. 31, '63
R. L. Boggs	1 s	5 e	36	N w n w	Nov. 20, '66
J. J. Turner	2 s	5 e	1	S e n e	Oct. 30, '67
Same	2 s	5 e	1	S e n w	Feb. 24, '65
Same	2 s	5 e	2	N w n e	Feb. 24, '65
F. M. Atteberry	2 s	5 e	2	N e n w	Oct. 24, '63
A. J. Halee	2 s	5 e	2	N e s e	Feb. 22, 1864
Same	2 s	5 e	2	N w s e	Feb. 22, 1864
657 A. J. Halee	2 s	5 e	2	S w s e	Feb. 22, 1864
Same	2 s	5 e	2	S e s e	Feb. 22, 1864
Lot Gregory	2 s	5 e	4	N w s w	Oct. 10, 1863
S. H. Keen	2 s	5 e	4	N e s e	M'ch 1, '64
John Keen, Jr.	2 s	5 e	4	N w s e	Dec. 8, 1863
Lot Gregory	2 s	5 e	5	S e n w	Oct. 10, 1863
W. R. Wiggins	2 s	5 e	6	N e n w	July 15, '64
Same	2 s	5 e	6	S w n w	Aug. 9, '64
Same	2 s	5 e	6	S e n w	July 15, '64
John Wood	2 s	5 e	6	N e s w	July 16, '64
Same	2 s	5 e	6	N w s w	July 16, '64
Same	2 s	5 e	6	S e s w	Aug. 2, '64
Geo. Keen	2 s	5 e	10	S w n e	Oct. 15, 1866
Jas. Alexander	2 s	5 e	10	N w s e	Sep. 21, 1866
Dan'l Mathews	2 s	5 e	10	S w s e	Sep. 21, 1866
Darius C. Warren	2 s	5 e	11	N w n e	Oct. 17, 1865
J. Ellis	2 s	5 e	11	N e n w	M'ch 6, 1865
D. C. Warren	2 s	5 e	11	S e n w	Oct. 17, 1865
Richard Sanders	2 s	5 e	11	S w s w	Nov. 1, '64
Same	2 s	5 e	11	S w s e	Nov. 1, '64
Samuel Miller	2 s	5 e	12	N e n e	Dec. 10, '63
A. F. Williams	2 s	5 e	12	N w n e	Jan. 10, 1866
W. H. Robinson	2 s	5 e	12	N e n w	July 1, 1865
Richard Sanders	2 s	5 e	14	N e n w	Nov. 1, 1864
Same	2 s	5 e	14	N w n w	Nov. 1, 1864
Same	2 s	5 e	14	S w n w	Jan. 23, '65
S. L. Austin	2 s	5 e	21	S e s e	Dec. 3, '63
Jas. N. Allen	2 s	5 e	22	S e n e	Aug. 24, 1863
A. K. Bruce	2 s	5 e	22	N e s w	Sep. 18, 1863
Same	2 s	5 e	22	N w s e	Sep. 18, 1863
Geo. W. Sinks	2 s	5 e	22	S e s w	Sep. 26, '63

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	2 s	5 e	22	N w s e	Sep. 18, '63
Same	2 s	5 e	22	S w s e	Sep. 18, 1863
Thomas Hood	2 s	5 e	22	S e s e	Jan. 1, '61
Isham Stroud	2 s	5 e	23	S w n e	Dec. 4, 1862
W. B. Bruce	2 s	5 e	23	S w n w	Feb. 3, ——
Isham Stroud	2 s	5 e	23	S e n w	Dec. 4, 1862
Ben. Cross	2 s	5 e	23	N e s w	Sep. 17, 1860
Same	2 s	5 e	23	N w s w	Sep. 17, 1860
W. C. Anderson	2 s	5 e	23	S w s w	Sep. 9, 1863
Same	2 s	5 e	23	S e s w	Sep. 9, 1863
Sol. Boyd	2 s	5 e	23	N e s e	Dec. 9, 1862
Isham Stroud	2 s	5 e	23	N w s e	Dec. 4, 1862
Same	2 s	5 e	23	S w s e	Dec. 3, 1863
Same	2 s	5 e	23	S e s e	Dec. 3, 1863
Alex. Barnett	2 s	5 e	24	S w s e	M'ch 31, '63
H. McWhite	2 s	5 e	24	S e s e	Oct. 4, 1864
John Stroud	2 s	5 e	25	N w n e	M'ch 25, 1863
Jesse Goldman	2 s	5 e	25	N e n w	M'ch 31, 1863
C. Sevedge	2 s	5 e	25	N w n w	M'ch 25, 1863
W. R. Stroud	2 s	5 e	25	S w n w	Feb. 27, '65
Lorenzo Knowles	2 s	5 e	25	S e n w	Oct. 6, '62
Abr. Stroud	2 s	5 e	25	N e s w	M'ch 31, 1863
Geo. W. Molding	2 s	5 e	25	N w s w	Feb. 14, 1867
Same	2 s	5 e	25	S w s w	Feb. 14, 1867
W. R. Stroud	2 s	5 e	25	S e s w	Apr. 1, 1863
Abr. Stroud	2 s	5 e	25	S w s e	M'ch 31, 1863
John Stroud	2 s	5 e	26	N e n e	Feb. 19, '64
Thos. Neel	2 s	5 e	26	N w n e	Nov. 19, '64
Acel Cross	2 s	5 e	26	S w n e	Sep. 27, '64
Same	2 s	5 e	26	S e n e	Sep. 27, '64
Ben. Cross	2 s	5 e	26	N e n w	Sep. 26, '63
J. N. Allen	2 s	5 e	26	N w n w	Feb. 15, 1864
Lorenzo Knowles	2 s	5 e	26	S e n w	Dec. 6, 1862
Sarah Gwin	2 s	5 e	26	N e s w	Sep. 27, '64
John W. Yates	2 s	5 e	26	N w s w	Oct. 3, 1859
Same	2 s	5 e	26	S w s w	Aug. 11, 1859
Rebecca Pruitt	2 s	5 e	26	S e s w	June 28, 1860
Sarah Gwin	2 s	5 e	26	N e s e	Sep. 27, '64
Same	2 s	5 e	26	N w s e	Sep. 27, '64
Rebecca Pruitt	2 s	5 e	26	S w s e	June 28, 1860
Sarah Gwin	2 s	5 e	26	S e s e	Sep. 27, '64
G. J. Burke	2 s	5 e	27	N e n w	Oct. 27, '66
J. A. Linville	2 s	5 e	27	S w n w	Dec. 31, '64
L. L. Austin	2 s	5 e	27	N e s w	Dec. 4, '60
Wm. Kimble	2 s	5 e	27	S w s w	M'ch 11, 1859

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
L. L. Austin	2 s	5 e	27	N w s e	Dec. 4, 1860
Calvin Shell	2 s	5 e	27	S e s e	Dec. 4, 1860
Jas. S. Austin	2 s	5 e	28	N e n e	Jan. 11, '64
S. S. Leddle	2 s	5 e	28	S w n e	Apr. 19, '64
J. A. Linville	2 s	5 e	28	S e n e	Dec. 31, '64
S. L. Austin	2 s	5 e	28	S w n w	Feb. 1, '65
J. D. McGill	2 s	5 e	28	S e n w	Jan. 31, '66
John Payne	2 s	5 e	28	N e s w	Nov. 19, '63
J. D. McGill	2 s	5 e	28	N w s w	Jan. 31, '66
Wm. Payne	2 s	5 e	28	S w s w	M'ch 3, 1857
Same	2 s	5 e	28	S e s w	M'ch 3, 1857
John Payne	2 s	5 e	28	N w s e	Nov. 19, '63
Jas, McGill	2 s	5 e	28	S e s e	Aug. 11, 1866
Wm. Payne	2 s	5 e	29	S e n e	M'ch 27, 1862
K. E. Bruce	2 s	5 e	29	N w n w	May 6, '64
A. K. Bruce	2 s	5 e	29	S w n w	Dec. 3, '64
E. J. Bates	2 s	5 e	29	N e s e	M'ch 18, 1859
J. J. Anderson	2 s	5 e	29	S w s e	July 24, 1856
F. M. Scrivner	2 s	5 e	29	S e s e	Dec. 5, '64
John Mateer	2 s	5 e	31	S e n e	July 24, '56
J. J. Anderson	2 s	5 e	32	N e n e	July 24, 1856
John Payne	2 s	5 e	32	S w n e	Dec. 4, 1856
Same	2 s	5 e	32	S e n e	May 17, 1859
J. J. Anderson	2 s	5 e	32	N e n w	July 24, 1856
John Mateer	2 s	5 e	32	N w n w	July 24, 1856
Same	2 s	5 e	32	S w n w	July 24, 1856
John Payne	2 s	5 e	32	N e s e	July 24, 1856
Same	2 s	5 e	32	S e s e	July 24, 1856
John M. Wood	2 s	5 e	33	N w n e	Apr. 30, 1859
Same	2 s	5 e	33	S e n e	M'ch 11, 1859
Wm. Payne	2 s	5 e	33	N w n w	M'ch 3, 1857
John Payne	2 s	5 e	33	N w s w	July 24, 1856
John W. Griffin	2 s	5 e	36	N e n e	M'ch 15, '65
Abr. Stroud	2 s	5 e	36	N w n e	Feb. 19, '64
H. McWhite	2 s	5 e	36	S w n e	M'ch 22, '64
Same	2 s	5 e	36	N e n w	Jan. 12, '64
L. D. Haynes	3 s	5 e	1	N e n w	Sep. 17, 1866
W. J. Myers	3 s	5 e	1	N w n w	Apr. 18, 1859
L. D. Haynes	3 s	5 e	1	S e n w	Oct. 28, '67
W. J. Myers	3 s	5 e	1	N w s w	Apr. 18, 1859
J. Q. A. Robb	3 s	5 e	1	S w s w	Jan. 4, 1867
C. Shell	3 s	5 e	2	N e n e	July 24, 1856
Same	3 s	5 e	2	S e n e	July 24, 1856
Same	3 s	5 e	2	N e s e	July 24, 1856
Same	3 s	5 e	2	S e s e	July 24, 1856

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Wm. Shaeffer	3 s	5 e	12	N e n e	May 28, 1864
Same	3 s	5 e	12	N w n e	May 28, 1864
Same	3 s	5 e	12	S w n e	May 28, 1864
Same	3 s	5 e	12	S e n e	May 28, 1864
Same	3 s	5 e	12	N e n w	May 28, 1864
Wm. J. Myers	3 s	5 e	12	N w n w	Apr. 18, 1859
Wm. Shaeffer	3 s	5 e	12	S e n w	May 28, 1864
R. Childers	3 s	5 e	12	N w s w	May 28, 1864
Wm. H. Smith	3 s	5 e	12	N e s e	Nov. 3, 1863
Daniel Smith	3 s	5 e	13	S e s e	July 3, 1865
C. C. Hopkins	3 s	5 e	13	N e n w	Apr. 29, 1859
John A. Smith	3 s	5 e	13	S e n w	Aug. 18, 1859
Same	3 s	5 e	13	N e s w	Aug 18, 1859
Same	3 s	5 e	13	N w s w	Aug. 18, 1859
Daniel Smith	3 s	5 e	13	N e s e	July 3, 1866
John P. Smith	3 s	5 e	14	N w n e	Feb. 7, '53
R. A. Jenkins	3 s	5 e	17	N e n w	M'ch 16, 1866
R. F. Jenkins	3 s	5 e	17	S e s w	June 4, 1856
Wm. Harshbarger	3 s	5 e	18	S w n e	Aug. 7, 1856
W. D. Turner	3 s	5 e	18	N e n w	May 19, 1859
Same	3 s	5 e	18	N w n w	May 19, 1859
Same	3 s	5 e	18	S w n w	May 19, 1859
Same	3 s	5 e	18	S e s w	May 19, 1859
W. A. Phillips	3 s	5 e	18	N e s w	Dec. 29, '63
Same	3 s	5 e	18	N w s w	M'ch 18, '63
J. W. Gates	3 s	5 e	18	S w s w	Jan. 3, '65
W. Harshbarger	3 s	5 e	18	S e s w	Aug. 7, 1856
Ann E. Stanley	3 s	5 e	18	N e s e	Dec. 5, '62
W. A. Phillips	3 s	5 e	18	N w s e	Dec. 29, '63
658					
W. Harshbarger	3 s	5 e	18	S w s e	Aug. 7, 1856
Elizabeth A. Stanley	3 s	5 e	18	S e s e	Dec. 5, '62
U. Pennington	1 s	6 e	9	S e n w	April 18, '58
Same	1 s	6 e	9	N e s w	April 18, '58
L. S. Plumlee	1 s	6 e	9	S e s w	July 11, 1863
J. B. Young	1 s	6 e	9	S w s e	Dec. 8, '63
C. M. Tibbs	1 s	6 e	11	N w s w	Oct. 20, '63
Same	1 s	6 e	11	S w s w	Oct. 20, '63
Geo. B. Hilliard	1 s	6 e	14	N w n w	Dec. 31, 1860
Same	1 s	6 e	14	N e n w	Dec. 31, 1860
R. Lappin	1 s	6 e	14	S w s w	Jan. 16, '64
C. M. Tibbs	1 s	6 e	15	N e n e	Nov. 17, '63
Same	1 s	6 e	15	S e n e	Nov. 17, '63
Soin Harris	1 s	6 e	19	S e s e	April 9, 1859

Def'ts' Ex. "*M*"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
J. W. Hilliard	1 s	6 e	20	N w n w	Jan. 23, 1863
Same	1 s	6 e	20	S w n w	Jan. 23, 1863
Rob't Forth	1 s	6 e	20	N e s w	Oct. 18, 1863
Same	1 s	6 e	20	N w s w	Oct. 18, 1863
Same	1 s	6 e	20	S w s w	Oct. 18, 1863
Same	1 s	6 e	20	S e s w	Oct. 18, 1863
N. G. Brown	1 s	6 e	20	N w s e	Feb. 12, '64
C. H. Slusher	1 s	6 e	23	N w n w	Dec. 13, '64
A. R. Porter	1 s	6 e	23	S w n w	Dec. 11, '63
N. N. Borah	1 s	6 e	23	N w s w	Nov. 26, '63
Same	1 s	6 e	23	S w s w	Nov. 26, '63
A. M. East	1 s	6 e	29	N w n w	Oct. 8, '63
Wm. Cates	1 s	6 e	29	S w n w	Oct. 2, '63
Wm. W. Dawson	1 s	6 e	29	N w s w	Oct. 24, '63
W. A. Forth	1 s	6 e	29	S w s w	Oct. 24, '63
R. T. Forth	1 s	6 e	29	S e s w	Sep. 24, '63
A. M. East	1 s	6 e	30	N e n e	Oct. 20, '63
Matilda Harris	1 s	6 e	30	N w n e	Feb. 24, '64
Gillian Harris	1 s	6 e	30	S w n e	Nov. 18, '63
Eph. E. Cates	1 s	6 e	30	S e n e	Oct. 2, '63
Gillian Harris	1 s	6 e	30	N e n w	Nov. 18, '63
R. T. Forth	1 s	6 e	30	S e n w	Nov. 4, '63
Eliz. J. Stewart	1 s	6 e	30	N e s w	Oct. 16, '63
J. W. Barnhill	1 s	6 e	30	N w s w	Oct. 16, '63
Same	1 s	6 e	30	S w s w	Oct. 16, '63
Same	1 s	6 e	30	S e s w	Oct. 16, '63
Wm. Fenton	1 s	6 e	30	N e s e	Oct. 24, '63
Eliz. J. Stuart	1 s	6 e	30	N w s e	Oct. 16, '63
Levi Stuart	1 s	6 e	30	S w s e	Feb. 15, '64
W. A. Forth	1 s	6 e	30	S e s e	Oct. 24, '63
E. Bullard	1 s	6 e	31	N e n e	Dec. 18, '63
J. H. Clark	1 s	6 e	31	N w n e	Dec. 18, '63
E. W. Bullard	1 s	6 e	31	S w n e	Jan. 18, '64
Same	1 s	6 e	31	S e n e	Jan. 18, '64
R. T. Forth	1 s	6 e	31	N e s w	Oct. 27, '64
Same	1 s	6 e	31	S w s w	Oct. 27, '64
Same	1 s	6 e	31	S e s w	Oct. 27, '64
Chas. F. Turner	1 s	6 e	32	N w n w	Aug. 4, '60
Same	1 s	6 e	32	N w s w	Aug. 4, '60
J. B. Manahan	1 s	6 e	35	S w n e	Oct. 22, '63
John W. Cisne	1 s	6 e	35	S w n w	M'ch 26, 1859
Alt. Denny	1 s	6 e	35	S e n w	June 23, ——
Isaac Harlan	1 s	6 e	35	S w s w	Sep. 29, 1856
Mc. Bullard	1 s	6 e	31	N e s e	Dec. 18, '63
Abr. Linder	1 s	6 e	31	S w s e	Oct. 5, 1860

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
A. J. Young	2 s	6 e	1	N w n w	Oct. 12, 1866
Same	2 s	6 e	1	S w n w	Oct. 12, 1866
H. J. Young	2 s	6 e	1	S e n w	Jan. 6, '64
Same	2 s	6 e	1	N e s w	Jan. 6, '64
F. Shoemaker	2 s	6 e	1	N w s w	Aug. 28, 1866
Oliver Watts	2 s	6 e	1	S w s w	May 28, 1867
Silsber Adams	2 s	6 e	1	S e s w	Feb. 3, '66
O. D. Tubbs	2 s	6 e	2	N w n e	Oct. 3, '63
R. C. Farra	2 s	6 e	2	S w n e	Oct. 26, '63
John W. Cisne	2 s	6 e	2	S e n e	Nov. 7, '63
Abner Womack	2 s	6 e	2	N e n w	Sep. 25, '63
Same	2 s	6 e	2	N w n w	Oct. 15, 1856
Same	2 s	6 e	2	S w n w	Oct. 15, 1856
David Baker	2 s	6 e	2	S e n w	Dec. 13, 1862
Rich. White	2 s	6 e	2	N e s w	Dec. 7, 1863
Riley Harris	2 s	6 e	2	N w s w	M'ch 7, 1863
Same	2 s	6 e	2	S w s w	M'ch 7, '63
Rich. White	2 s	6 e	2	S e s w	Dec. 7, '63
O. B. Tubbs	2 s	6 e	2	N w s e	Oct. 9, 1863
J. H. Byfford	2 s	6 e	5	S e s w	June 9, 1858
Same	2 s	6 e	5	N e s w	June 9, 1858
John Keen, Sr.	2 s	6 e	5	N w s e	Nov. 23, 1861
Alf. Miller	2 s	6 e	6	N e s e	July 6, 1859
Mahala Cooper	2 s	6 e	6	S e s e	M'ch 11, 1853
Polly A. Johnson	2 s	6 e	7	S w n e	Apr. 9, '64
Hannah Johnson	2 s	6 e	7	S e n e	Sep. 10, '64
Sam'l Miller	2 s	6 e	7	S e n w	M'ch 6, '65
Samuel Linder	2 s	6 e	8	S e n w	Feb. 19, '66
S. M. Anderson	2 s	6 e	8	N e s e	Feb. 4, 1867
J. R. Bain	2 s	6 e	10	S e n e	Dec. 7, '63
Same	2 s	6 e	10	N e s e	Dec. 1, '63
John Jones	2 s	6 e	10	N w s e	Jan. 7, 1857
M. M. Wheeler	2 s	6 e	10	S w s e	Dec. 7, '63
James Baine	2 s	6 e	10	S e s e	Nov. 4, '63
Rich. Grant	2 s	6 e	11	N e n w	Dec. 2, '63
T. L. Cooper	2 s	6 e	11	N w n w	June 8, '63
Same	2 s	6 e	11	S w n w	June 8, '63
Richard Grant	2 s	6 e	11	S e n w	Dec. 2, '63
Chris. Walter	2 s	6 e	11	N w s w	Nov. 21, '63
James Baine	2 s	6 e	11	S w s w	Nov. 11, '63
Michael Book	2 s	6 e	11	S e s e	Sep. 17, '64
Robert Davis	2 s	6 e	12	S e n e	Nov. 15, '65
Silsber Adams	2 s	6 e	12	N e n w	Feb. 3, '66
Same	2 s	6 e	12	N w n w	Oct. 30, 1866
G. W. Galbraith	2 s	6 e	12	S e n w	Oct. 17, 1866

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
H. D. Cravens	2 s	6 e	12	N e s w	Oct. 23, 1866
Same	2 s	6 e	12	N w s w	Nov. 17, 1866
Same	2 s	6 e	12	S e s w	Oct. 23, 1866
Robert Davis	2 s	6 e	12	N e s e	Nov. 30, 1865
Jas. McKitrick	2 s	6 e	12	N w s e	Dec. 7, '65
Same	2 s	6 e	12	S w s e	Dec. 7, '65
L. J. Davis	2 s	6 e	12	S e s e	Nov. 18, '63
J. W. Atkinson	2 s	6 e	13	N e n e	Nov. 16, '63
Edward Clark	2 s	6 e	13	N w n e	Nov. 30, '67
J. W. Gaston	2 s	6 e	13	S w n e	Nov. 21, '63
John Clark	2 s	6 e	13	N e n w	Nov. 29, '67
Same	2 s	6 e	13	S e n w	Nov. 29, '67
Naomi Caudle	2 s	6 e	13	N w s w	Nov. 9, 1867
John T. Hall	2 s	6 e	13	N e s e	Nov. 2, '67
R. L. Boggs	2 s	6 e	13	N w s e	Dec. 2, '67
Samuel Kittle	2 s	6 e	13	S e s e	Nov. 24, 1866
Michael Book	2 s	6 e	14	N e n e	Sep. 17, '64
Wm. F. Book	2 s	6 e	14	S e n e	Oct. 1, '64
Naomi Caudle	2 s	6 e	14	N e s e	Nov. 9, '67
William L. Young	2 s	6 e	15	N e n e	Jan. 19, '66
H. Walker	2 s	6 e	15	N w n e	Dec. 5, '63
Same	2 s	6 e	15	S w n e	Dec. 5, '63
M. M. Wheeler	2 s	6 e	15	S e n e	Feb. 20, '66
J. Trousdale	2 s	6 e	15	S w n w	June 10, '63
Same	2 s	6 e	15	S e n w	June 10, '63
M. M. Wheeler	2 s	6 e	15	N e s w	July 24, —
Wm. Stephen	2 s	6 e	15	N w s w	Dec. 22, '63
Wm. Malone	2 s	6 e	15	S w s w	June 30, '65
Peter Hawkins	2 s	6 e	15	S e s w	June 27, 1863
J. L. Deem	2 s	6 e	15	N e s e	Dec. 7, '63
M. M. Wheeler	2 s	6 e	15	N w s e	July 24, —
Peter Hawkins	2 s	6 e	15	S w s e	June 27, 1863
C. T. Higden	2 s	6 e	19	S e n e	Oct. 2, 1863
M. M. Patterson	2 s	6 e	19	S w n e	Jan. 14, 1861
James Hails	2 s	6 e	19	S e n w	Feb. 13, 1867
A. Barnett	2 s	6 e	19	S e s w	Feb. 13, '64
M. M. Patterson	2 s	6 e	19	N w s e	Jan. 14, '61
Robert Barr	2 s	6 e	20	N w n w	Nov. 13, '67
W. L. Beeson	2 s	6 e	21	N w n e	Apr. 16, 1867
J. J. R. Turney	2 s	6 e	21	N e n w	Dec. 2, '67
Wm. Malone	2 s	6 e	22	N w n w	June 30, '65
N. N. Borah	2 s	6 e	22	N e s e	Dec. 8, '63
Same	2 s	6 e	22	S e s e	Dec. 8, '63
Same	2 s	6 e	23	N w s w	Dec. 8, '63
Same	2 s	6 e	23	S w s w	Dec. 8, '63

Def'ts' Ex. "M"—Continued.

	Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
	H. S. Ellis	2 s	6 e	24	N e s e	Apr. 9, '64
659	H. S. Ellis	2 s	6 e	24	S w s e	Apr. 9, '64
	Same	2 s	6 e	24	S e s e	Apr. 9, '64
	Same	2 s	6 e	25	N e n e	Apr. 9, '64
	C. M. Wakefield	2 s	6 e	25	S w s w	Aug. 16, '64
	Same	2 s	6 e	25	S e s w	Aug. 16, '64
	M. M. Wheeler	2 s	6 e	27	N e n e	Dec. 30, '63
	Same	2 s	6 e	27	N w n e	Dec. 30, '63
	W. H. Grant	2 s	6 e	27	S w n e	Dec. 30, '63
	J. C. Staton	2 s	6 e	27	S e n e	Feb. 9, '64
	John Boswell	2 s	6 e	27	N e s w	Jan. 14, '65
	Same	2 s	6 e	27	N w s w	M'ch 14, '65
	Same	2 s	6 e	27	S w s w	Feb. 23, '65
	Same	2 s	6 e	27	S e s w	Feb. 23, '65
	W. H. Grant	2 s	6 e	27	N e s e	Feb. 14, '65
	Geo. W. Johnson	2 s	6 e	31	S w n e	July 22, —
	J. W. Griffin	2 s	6 e	31	S e s e	M'ch 21, '64
	John C. Crane	2 s	6 e	32	S e n w	Oct. 8, 1866
	J. B. Mitchell	2 s	6 e	32	N w s w	Feb. 16, '65
	Q. Q. Wakefield	2 s	6 e	35	N e n e	M'ch 12, '66
	Same	2 s	6 e	35	N w n e	M'ch 12, '66
	Same	2 s	6 e	35	S w n e	M'ch 12, '66
	Same	2 s	6 e	35	S e n e	M'ch 12, '66
	A. J. Robinson	2 s	6 e	35	N e s w	Nov. 27, '67
	Same	2 s	6 e	35	S e s w	Nov. 27, '67
	J. B. Pendleton	2 s	6 e	35	N e s e	Nov. 25, '67
	Same	2 s	6 e	35	N w s e	Nov. 25, '67
	A. J. Robinson	2 s	6 e	35	S w s e	Nov. 27, '67
	Same	2 s	6 e	35	S e s e	Nov. 27, '67
	L. J. Rider	2 s	6 e	36	N e n e	Aug. 16, '64
	Same	2 s	6 e	36	N w n e	Aug. 16, '64
	Arch. Bean	2 s	6 e	36	S w n e	Jan. 23, '65
	Same	2 s	6 e	36	S e n e	Jan. 23, '65
	C. M. Wakefield	2 s	6 e	36	N e n w	Aug. 16, '64
	Same	2 s	6 e	36	N w n w	Aug. 16, '64
	L. B. Woodworth	2 s	6 e	36	N e s e	Jan. 23, '65
	G. M. McDougal	2 s	6 e	36	N w s e	Nov. 27, —
	Same	2 s	6 e	36	S w s e	Nov. 27, '65
	Same	2 s	6 e	36	S e s e	Nov. 27, '65
	A. J. Robinson	3 s	6 e	2	N e n e	Nov. 27, '67
	Same	3 s	6 e	2	N w n e	Nov. 27, '67
	Same	3 s	6 e	2	S w n e	Nov. 27, '67
	Same	3 s	6 e	2	S e n e	Nov. 27, '67
	Same	3 s	6 e	2	N e n w	Nov. 27, '67
	Same	3 s	6 e	2	S e n w	Nov. 27, '67

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
R. Kirtland	3 s	6 e	4	N e n w	Jan. 16, '65
Wm. Mabry	3 s	6 e	4	S e n w	Feb. 27, '64
Same	3 s	6 e	4	N w s e	Feb. 27, '64
G. W. Foreaker	3 s	6 e	4	S w s e	Dec. 26, 1862
S. A. Long	3 s	6 e	7	S w n e	Feb. 3, '65
W. P. Boswell	3 s	6 e	7	S e s w	Oct. 12, '64
J. C. Thomasson	3 s	6 e	10	S w n e	Apr. 19, 1867
J. R. Buchanan	3 s	6 e	10	S e n w	Jan. 23, '64
J. N. Carter	3 s	6 e	10	N w s e	Dec. 9, '63
W. Trotter	3 s	6 e	10	S e s e	Jan. 4, 1866
John Trotter	3 s	6 e	12	N w s w	M'ch 4, 1859
Sol. Coates	3 s	6 e	12	S e s w	Nov. 20, 1865
Sarah Walker	3 s	6 e	12	S w s e	Nov. 30, ——
David Garrison	3 s	6 e	14	S w n w	Dec. 11, '65
C. L. Thomasson	3 s	6 e	18	N e n e	Feb. 19, '64
Samuel A. Long	3 s	6 e	18	N w n e	Jan. 5, '65
Same	3 s	6 e	18	S w n e	Feb. 3, '65
C. P. Thomasson	3 s	6 e	18	S e n e	Feb. 19, '64
S. A. Long	3 s	6 e	18	N e n w	Jan. 5, '65
David Long	3 s	6 e	18	S e n w	Jan. 5, '65
Same	3 s	6 e	18	N e s w	Jan. 5, '65
Isabel Long	3 s	6 e	18	S e s w	Feb. 3, '65
J. H. Hansbraugh	3 s	6 e	18	N w s e	Nov. 7, 1860
John Clark	2 s	7 e	7	S w s w	Nov. 20, '63
G. W. Greenwood	2 s	7 e	10	S e n e	Nov. 21, '63
J. J. R. Turney	2 s	7 e	10	S e s w	Oct. 14, '64
W. R. Clark	2 s	7 e	10	S w s e	Nov. 10, '63
Albert Curry	2 s	7 e	10	S e s e	Nov. 23, '63
Wm. Ewing	2 s	7 e	11	S w s w	Nov. 24, '63
Same	2 s	7 e	11	S e s w	Nov. 24, '63
Same	2 s	7 e	14	N e n w	Nov. 24, '63
Wm. Ewing	2 s	7 e	14	N w n w	Nov. 24, '63
Same	2 s	7 e	14	S w n w	Nov. 24, '63
Jeff. Clark	2 s	7 e	14	S e n w	Dec. 18, '62
M. J. Clark	2 s	7 e	14	N e s w	Nov. 25, '63
Same	2 s	7 e	14	N w s w	Nov. 25, '63
Emanuel Koontz	2 s	7 e	14	S w s w	Dec. 5, '63
Thos. Clark	2 s	7 e	14	S e s w	Nov. 25, '63
A. J. Neville	2 s	7 e	15	N w n e	Nov. 17, '63
Same	2 s	7 e	15	S w n e	Nov. 17, '63
J. T. Greenwood	2 s	7 e	15	S e n e	Nov. 23, '63
A. W. Daisey	2 s	7 e	15	N e n w	Apr. 9, '64
Same	2 s	7 e	15	N w n w	Apr. 9, '64
Same	2 s	7 e	15	S w n w	Nov. 16, '63
J. J. R. Turney	2 s	7 e	15	S e n w	Oct. 14, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
T. Cunningham	2 s	7 e	15	N e s w	Nov. 12, '63
A. W. Daisey	2 s	7 e	15	N w s w	Nov. 16, '63
Same	2 s	7 e	15	S w s w	Nov. 16, '63
T. Cunningham	2 s	7 e	15	S e s w	Nov. 12, '63
R. B. Slocumb	2 s	7 e	15	N e s e	Nov. 12, '63
Samuel H. Book	2 s	7 e	15	N w s e	Nov. 12, '63
Wm. F. Book	2 s	7 e	15	S w s e	Nov. 12, '63
R. B. Slocumb	2 s	7 e	15	S e s e	Nov. 12, '63
Jesse Garrison	2 s	7 e	19	N e s w	Dec. 3, '63
Same	2 s	7 e	19	N w s w	Dec. 3, '63
Same	2 s	7 e	19	S w s w	Dec. 3, '63
Same	2 s	7 e	19	S e s w	Dec. 3, '63
Henry Curry	2 s	7 e	20	N e n e	Oct. 28, '63
Chas. R. Powell	2 s	7 e	20	N w n e	Nov. 21, '63
Same	2 s	7 e	20	S w n e	Nov. 21, '63
W. Book	2 s	7 e	20	S e n e	Nov. 2, 1863
Geo. Book	2 s	7 e	20	S w n w	Jan. 16, 1863
J. H. Harrison	2 s	7 e	20	S e n w	Nov. 30, '63
Same	2 s	7 e	20	N e s w	Nov. 30, '63
Geo. Book	2 s	7 e	20	N w s w	Jan. 16, 1863
Geo. M. Butler	2 s	7 e	20	S w s w	Oct. 28, '63
E. E. Carter	2 s	7 e	20	N e s e	Jan. 19, '63
Same	2 s	7 e	20	N w s e	Jan. 19, '63
T. Buffington	2 s	7 e	21	N e n e	Nov. 10, '63
L. J. Rider	2 s	7 e	21	N w n e	Nov. 11, '63
Same	2 s	7 e	21	S w n e	Nov. 11, '63
T. Buffington	2 s	7 e	21	S e n e	Nov. 10, '63
M. Book	2 s	7 e	21	N e n w	Feb. 23, '65
J. W. Atkinson	2 s	7 e	21	N w n w	Nov. 5, '63
Samuel Bender	2 s	7 e	21	S w n w	Dec. 1, 1866
M. Book	2 s	7 e	21	S e n w	Feb. 23, '65
G. M. Butler	2 s	7 e	21	N e s w	Nov. 23, '63
J. W. Atkinson	2 s	7 e	21	N w s w	Feb. 20, '65
W. Treat	2 s	7 e	21	S w s w	Nov. 11, '65
Wm. Sloan	2 s	7 e	21	S e s w	Nov. 11, '65
L. J. Rider	2 s	7 e	21	N e s e	Nov. 13, '63
Same	2 s	7 e	21	N w s e	Nov. 13, '63
Same	2 s	7 e	21	S w s e	Aug. 16, '64
Wm. Baker	2 s	7 e	21	S e s e	Nov. 13, '63
Geo. Baker	2 s	7 e	22	N e n e	Nov. 12, '63
R. Baker	2 s	7 e	22	N w n e	Nov. 13, '63
Jas. W. Barnhill	2 s	7 e	22	S w n e	Nov. 16, '63
Same	2 s	7 e	22	S e n e	Nov. 16, '63
J. B. Cunningham	2 s	7 e	22	N e n w	Nov. 23, '63
Samuel Yates	2 s	7 e	22	N w n w	Nov. 25, '63

Def'ts' Ex. "*M.*"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
George Baker	2 s	7 e	22	S w n w	Nov. 12, '63
T. Cooper	2 s	7 e	22	S e n w	Nov. 19, '63
R. P. Hanna	2 s	7 e	22	N e s w	Dec. 2, '67
Same	5 s	7 e	22	N w s w	Dec. 2, '67
L. J. Rider	2 s	7 e	22	S w s w	Aug. 16, '64
R. P. Hanna	2 s	7 e	22	S e s w	Dec. 2, '67
Carter & Schwaberg	2 s	7 e	22	N e s e	Dec. 20, '63
Wm. Iddings	2 s	7 e	22	N w s e	Nov. 19, '63
Alex. Clark	2 s	7 e	23	N w n w	Nov. 25, '63
R. P. Hanna	2 s	7 e	27	N e n w	Dec. 2, '67
L. J. Rider	2 s	7 e	27	N w n w	Aug. 16, '64
J. J. R. Turney	2 s	7 e	27	S w s e	July 16, '64
L. J. Rider	2 s	7 e	28	N e n e	Aug. 16, '64
Alex. Book	2 s	7 e	28	N w n e	Nov. 16, '63
Agnes A. Book	2 s	7 e	28	S w n e	Nov. 16, '63
M. J. Treat	2 s	7 e	28	N e n w	Dec. 15, '63
660 Charles Powell	2 s	7 e	28	N e s w	Dec. 17, 1866
C. R. Powell	2 s	7 e	28	N w s w	Dec. 26, '64
J. S. C. Hall	2 s	7 e	28	S e s w	Nov. 23, '63
J. R. Powell	2 s	7 e	29	N e n w	Nov. 16, '63
L. J. Shoemaker	2 s	7 e	29	N w n w	Dec. 5, '63
Jesse Garrison	2 s	7 e	30	N e n w	Dec. 5, '63
Same	2 s	7 e	30	N w n w	Dec. 5, '63
A. J. Neville	2 s	7 e	30	N e s w	Feb. 26, '64
Same	2 s	7 e	30	N w s w	Feb. 26, '64
C. A. S. Patton	2 s	7 e	30	N w s e	Nov. 17, 1863
Wm. S. Smith	2 s	7 e	30	S e s e	Oct. 11, 1866
G. M. McDougal	2 s	7 e	31	N e s w	Nov. 27, ——
Same	2 s	7 e	31	N w s w	Nov. 27, ——
Same	2 s	7 e	31	S w s w	Nov. 27, ——
Same	2 s	7 e	31	S e s w	Nov. 27, ——
Same	2 s	7 e	31	S w s e	Nov. 27, ——
L. J. Rider	2 s	7 e	31	S e s e	M'ch 13, '65
F. Bean	2 s	7 e	32	N e n e	July 25, '65
Arch. Bean	2 s	7 e	32	N w n e	Jan. 23, '65
Geo. Bean	2 s	7 e	32	S w n e	July 25, '65
E. B. Griffin	2 s	7 e	32	N e n w	M'ch 20, '65
Same	2 s	7 e	32	S e n w	M'ch 20, '65
L. J. Rider	2 s	7 e	32	S w s w	Aug. 16, '64
H. S. Ellis	2 s	7 e	32	S e s w	Apr. 9, '64
Same	2 s	7 e	32	S w s e	Apr. 9, '64
L. J. Rider	2 s	7 e	33	N e n e	Apr. 16, '64
W. H. Robinson	2 s	7 e	33	N w n e	Nov. 20, '63
Same	2 s	7 e	33	S w n e	Nov. 16, '63
L. J. Rider	2 s	7 e	33	S e s e	Aug. 16, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Wm. F. Hall	2 s	7 e	33	N e n w	Nov. 19, '63
Wm. Iddings	2 s	7 e	33	S e n w	Nov. 19, '63
Same	2 s	7 e	33	N e s w	Nov. 19, '63
Samuel Yates	2 s	7 e	33	S e s w	Nov. 19, '63
A. Cunningham	2 s	7 e	33	N e s e	Nov. 25, '63
J. W. Atkinson	2 s	7 e	33	N w s e	Nov. 16, '63
A. Cunningham	2 s	7 e	33	S w s e	Nov. 25, '63
T. Buffington	2 s	7 e	33	S e s e	Dec. 10, '63
L. J. Davis	2 s	7 e	34	S w s w	Nov. 18, '63
Reuben Baker	2 s	7 e	34	S e s w	Nov. 27, '63
Cad. Jones	2 s	7 e	34	S w s e	M'ch 17, '65
E. T. Hall	2 s	7 e	35	S w s w	Feb. 4, '64
Same	2 s	7 e	35	S e s w	Feb. 4, '64
M. J. Whalin	2 s	7 e	35	N w s e	Feb. 27, '64
James E. Clark	2 s	7 e	35	S w s e	Nov. 24, '63
J. B. Tenison	3 s	7 e	2	N w n e	Dec. 19, '63
Same	3 s	7 e	2	S w n e	Dec. 19, '63
E. T. Hall	3 s	7 e	2	N e n w	Feb. 4, '64
Same	3 s	7 e	2	N w n w	Feb. 4, '64
Same	3 s	7 e	2	S w n w	Feb. 4, '64
Same	3 s	7 e	2	S e n w	Feb. 4, '64
Feldon Herald	3 s	7 e	2	N w s e	Dec. 13, 1862
Same	3 s	7 e	2	S e s e	Dec. 13, 1862
E. T. Hall	3 s	7 e	3	N w s w	Feb. 4, '64
Same	3 s	7 e	3	N e s w	Feb. 4, '64
Geo. Baker	3 s	7 e	3	S w s w	Nov. 27, '63
E. T. Hall	3 s	7 e	3	S e s w	Feb. 4, '64
Same	3 s	7 e	3	N e s e	Feb. 4, '64
Same	3 s	7 e	3	N w s e	Feb. 4, '64
Same	3 s	7 e	3	S w s e	Feb. 4, '64
Same	3 s	7 e	3	S e s e	Feb. 4, '64
Sylvester Rider	3 s	7 e	4	N e s w	Nov. 11, '63
L. J. Rider	3 s	7 e	4	S w s w	Nov. 11, '63
Same	3 s	7 e	4	S e s w	Nov. 11, '63
Sylvester Rider	3 s	7 e	4	N w s e	Nov. 11, '63
L. J. Rider	3 s	7 e	4	S w s e	Nov. 11, '63
T. Cunningham	3 s	7 e	4	S e s e	Nov. 25, '63
H. S. Ellis	3 s	7 e	5	N w n e	Apr. 9, '64
Same	3 s	7 e	5	S w n e	Apr. 9, '64
Same	3 s	7 e	5	N e n w	Apr. 9, '64
L. J. Rider	3 s	7 e	5	N w n w	Aug. 16, '64
Same	3 s	7 e	5	S w n w	Aug. 16, '64
H. S. Ellis	3 s	7 e	5	S e n w	Apr. 9, '64
Same	3 s	7 e	5	N e s w	Apr. 9, '64
Same	3 s	7 e	5	N w s e	Apr. 9, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
G. M. McDougal	3 s	7 e	6	N e n e	Nov. 27, ——
G. M. McDougal	3 s	7 e	6	N w n e	Nov. 27, ——
Same	3 s	7 e	6	S w n e	Nov. 27, ——
Same	3 s	7 e	6	S e n e	Nov. 27, ——
Same	3 s	7 e	6	N e n w	Nov. 27, '65
Same	3 s	7 e	6	N w n w	Nov. 27, '65
Same	3 s	7 e	6	S w n w	Nov. 27, '65
Same	3 s	7 e	6	S e n w	Nov. 27, '65
Same	3 s	7 e	6	N e s w	Nov. 27, '65
Same	3 s	7 e	6	N w s w	Nov. 27, '65
Same	3 s	7 e	6	S w s w	Nov. 27, '65
Same	3 s	7 e	6	S e s w	Nov. 27, '65
Same	3 s	7 e	6	N e s e	Nov. 27, '65
Same	3 s	7 e	6	N w s e	Nov. 27, '65
Same	3 s	7 e	6	S w s e	Nov. 27, '65
Same	3 s	7 e	6	S e s e	Nov. 27, '65
Edward Brown	3 s	7 e	7	S w s w	Nov. 27, '65
E. T. Hall	3 s	7 e	9	N e n e	Feb. 4, '64
Same	3 s	7 e	9	N w n e	Feb. 4, '64
Same	3 s	7 e	9	S w n e	Feb. 4, '64
Same	3 s	7 e	9	S e n e	Feb. 4, '64
Same	3 s	7 e	9	N e n w	Feb. 4, '64
Same	3 s	7 e	9	S e n w	Feb. 4, '64
Same	3 s	7 e	9	N e s e	Feb. 4, '64
Same	3 s	7 e	10	N e n e	Feb. 4, '64
Same	3 s	7 e	10	N w n e	Feb. 4, '64
Same	3 s	7 e	10	S w n e	Feb. 4, '64
Same	3 s	7 e	10	S e n e	Feb. 4, '64
Same	3 s	7 e	10	N e n w	Feb. 4, '64
Same	3 s	7 e	10	N w n w	Feb. 4, '64
Same	3 s	7 e	10	S w n w	Feb. 4, '64
Same	3 s	7 e	10	S e n w	Feb. 4, '64
Same	3 s	7 e	10	N e s w	Feb. 4, '64
Same	3 s	7 e	10	N w s w	Feb. 4, '64
Same	3 s	7 e	10	S w s w	Feb. 4, '64
Same	3 s	7 e	10	S e s w	Feb. 4, '64
Same	3 s	7 e	10	N e s e	Feb. 4, '64
Same	3 s	7 e	10	N w s e	Feb. 4, '64
Same	3 s	7 e	10	S w s e	Feb. 4, '64
Same	3 s	7 e	10	S e s e	Feb. 4, '64
Hiram Tucker	3 s	7 e	12	S w n w	Jan. 25, '64
Same	3 s	7 e	12	N e s w	Jan. 25, '64
Same	3 s	7 e	12	N e s e	Jan. 25, '64
Same	3 s	7 e	12	N w s e	Jan. 25, '64
Nathan Renfro	3 s	7 e	12	S w s e	Sept. 27, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	3 s	7 e	12	S e s e	Sept. 27, '64
Thos. S. Walker	3 s	7 e	18	S w s e	Oct. 13, 1868
J. W. Buchanan	3 s	7 e	18	S w n w	Feb. 17, '66
D. H. Fitzgerrel	1 s	8 e	1	S e s w	Oct. 7, '63
W. B. Livingstone	1 s	8 e	2	N w	Oct. 11, '65
Same	1 s	8 e	2	N e s w	Oct. 11, '65
Same	1 s	8 e	2	N w s w	Oct. 11, '65
Same	1 s	8 e	2	S w s w	Oct. 11, '65
Same	1 s	8 e	2	S e s w	Oct. 11, '65
Same	1 s	8 e	2	N e s e	Oct. 11, '65
Same	1 s	8 e	2	N w s e	Oct. 11, '65
Same	1 s	8 e	2	S w s e	Oct. 11, '65
Same	1 s	8 e	2	S e s e	Oct. 11, '65
Henry Rankins	1 s	8 e	3	N e n e	Nov. 21, '67
Same	1 s	8 e	3	N w n e	Nov. 21, '67
Same	1 s	8 e	3	S w n e	Nov. 21, '67
Same	1 s	8 e	3	S e n e	Nov. 21, '67
Same	1 s	8 e	3	N e n w	Nov. 21, '67
Same	1 s	8 e	3	N w n w	Nov. 21, '67
Same	1 s	8 e	3	S w n w	Nov. 21, '67
Same	1 s	8 e	3	S e n w	Nov. 21, '67
Jas. McCartney	1 s	8 e	3	N e s e	Nov. 18, '67
Henry Rankins	1 s	8 e	4	N e n e	Nov. 21, '67
Same	1 s	8 e	4	N w n e	Nov. 21, '67
Samuel Borah	1 s	8 e	4	S w n e	Apr. 1, '67
Lloyd Borah	1 s	8 e	4	S e n e	Apr. 1, '67
Henry Rankin	1 s	8 e	4	N e n w	Nov. 21, '67
Same	1 s	8 e	4	N w n w	Nov. 21, '67
Stephen Files	1 s	8 e	4	S w n w	Apr. 21, '64
J. J. R. Turney	1 s	8 e	4	S e n w	Dec. 3, '64
Same	1 s	8 e	4	N e s w	Dec. 3, '64
661 R. A. Moss	1 s	8 e	5	N e n e	Sep. 16, '67
Elson Towns	1 s	8 e	5	N w n e	M'ch 18, '65
Same	1 s	8 e	5	S w n e	M'ch 18, '65
Same	1 s	8 e	5	S e n e	M'ch 18, '65
E. P. Gram	1 s	8 e	5	N e n w	Feb. 16, '64
L. Sumpter	1 s	8 e	5	N w n w	Feb. 2, '64
Same	1 s	8 e	5	S w n w	Feb. 2, '64
Elson Towns	1 s	8 e	5	S e n w	M'ch 18, ——
Emanuel Brown	1 s	8 e	5	N e s w	Feb. 16, '64
L. Sumpter	1 s	8 e	5	N w s w	Feb. 2, '64
J. J. R. Turney	1 s	8 e	5	S w s w	Jan. 12, '65
S. Stewart	1 s	8 e	5	S e s w	July 6, '64
Same	1 s	8 e	5	N w s e	Nov. 24, '64
J. J. R. Turney	1 s	8 e	7	N e n w	M'ch 4, '65

Def't.' Ex. "*M*"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	1 s	8 e	7	N e n e	Jan. 12, '65
Same	1 s	8 e	7	N w n e	Feb. 4, '65
Same	1 s	8 e	7	N w n w	Jan. 12, '65
J. D. Cope	1 s	8 e	7	N e n w	June 4, '66
Same	1 s	8 e	7	S w n w	June 4, '66
D. S. Camfield	1 s	8 e	11	N e n e	Feb. 28, 1865
Same	1 s	8 e	11	N w n e	Feb. 28, 1865
Same	1 s	8 e	11	S w n e	Feb. 28, 1865
Same	1 s	8 e	11	S e n e	Feb. 28, 1865
Wm. M. Robins	1 s	8 e	11	N e s e	Aug. 11, ——
Same	1 s	8 e	11	N w s e	do. 11, ——
Same	1 s	8 e	11	S w s e	do. 11, 1865
Same	1 s	8 e	11	S e s e	do. 11, 1865
Same	1 s	8 e	12	N e n e	do. 19, 1865
Same	1 s	8 e	12	N w n e	do. 19, 1865
Same	1 s	8 e	12	S w n e	do. 19, 1865
Same	1 s	8 e	12	S e n e	do. 19, 1865
Same	1 s	8 e	12	N e n w	do. 19, 1865
Same	1 s	8 e	12	N w n w	do. 19, 1865
Same	1 s	8 e	12	S w n w	do. 11, 1865
Same	1 s	8 e	12	S e n w	do. 11, 1865
Same	1 s	8 e	12	N e s w	do. 11, 1865
Same	1 s	8 e	12	N w s w	do. 11, 1865
Same	1 s	8 e	12	S w s w	do. 11, 1865
Same	1 s	8 e	12	S e s w	do. 11, 1865
Same	1 s	8 e	12	N e s e	do. 19, 1865
Same	1 s	8 e	12	N w s e	do. 19, 1865
Same	1 s	8 e	12	S w s e	do. 19, 1865
Same	1 s	8 e	12	S e s e	do. 19, 1865
Oliver Holmes	1 s	8 e	13	N e n e	Nov. 25, '67
Same	1 s	8 e	13	S e n e	do. 25, '67
Wm. L. Jones	1 s	8 e	13	N w n e	Feb. 26, '57
Same	1 s	8 e	13	S w n e	do. 26, '57
Geo. L. Borah	1 s	8 e	13	N w s w	Nov. 20, '63
Oliver Holmes	1 s	8 e	13	S e s w	do. 25, '57
Same	1 s	8 e	13	N e s e	Nov. 25, '67
Wm. L. Jones	1 s	8 e	13	N w s e	Feb. 26, '57
Oliver Holmes	1 s	8 e	13	S w s e	Nov. 25, '67
Same	1 s	8 e	13	S e s e	do. 25, '67
John Borah	1 s	8 e	23	N w n w	M'ch 14, '57
Epperson Brown	1 s	8 e	24	N e n w	Dec. 22, '62
Same	1 s	8 e	24	N w n w	do. 22, '62
Wm. Brown	1 s	8 e	24	S w n w	Sep. 3, 1857
Same	1 s	8 e	24	S e n w	Sep. 3, 1857
Wm. N. Borah	1 s	8 e	24	N e s w	Dec. 13, 1862

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Isaac J. Day	2 s	8 e	14	N w s w	Feb. 27, 1857
D. H. Day	2 s	8 e	14	E h'f s e s w	Dec. 23, 1868
Morgan Harris	2 s	8 e	14	W h'f s e s w	M'ch 21, 1857
George Felix	2 s	8 e	22	S w s e	May 16, '64
W. A. Carter	2 s	8 e	22	S e s e	May 16, '64
A. B. McManama	2 s	8 e	23	N w s w	Dec. 8, '64
Same	2 s	8 e	23	S w s w	do. 8, '64
Same	2 s	8 e	23	S e s w	do. 8, '64
Same	2 s	8 e	23	S w s e	do. 8, '64
Wm. Lock	2 s	8 e	23	S e s e	do. 12, '63
McManama	2 s	8 e	25	S w n e	do. 13, '64
Same	2 s	8 e	25	S e n e	do. 13, '64
Same	2 s	8 e	25	N e n w	do. 13, '64
Jas. D. Gash	2 s	8 e	25	N w n w	do. 23, '62
McManam	2 s	8 e	25	S w n w	do. 13, '64
Same	2 s	8 e	25	S e n w	do. 13, '64
J. W. Barnhill	2 s	8 e	26	N e n e	do. 27, '65
John I. Felix	2 s	8 e	26	S w n w	July 18, 1859
Same	2 s	8 e	26	S e n w	July 18, 1859
Wm. J. Vaughn	2 s	8 e	26	N w s e	Dec. 4, '63
Harlan & Kenshalo	3 s	8 e	6	N e n w	Jan. 28, '64
Thomas Cooper	3 s	8 e	6	S w n w	Dec. 9, '63
B. S. Meeks	3 s	8 e	6	S e n w	M'ch 24, ——
Same	3 s	8 e	6	N w s w	Dec. 29, 1862
Jos. Odell	3 s	8 e	6	S w s w	do. 10, '63
Tilden Herald	3 s	8 e	7	N w n w	do. 13, 1862
Same	3 s	8 e	7	S w n w	do. 13, 1862
H. C. Shelton	3 s	8 e	7	N e s w	Jan. 11, '64
Noah Renfro	3 s	8 e	7	N w s w	Dec. 12, '63
Same	3 s	8 e	7	S w s w	do. 12, '63
Eli Atteberry	3 s	8 e	7	S e s w	Feb. 4, '64
H. C. Shelton	3 s	8 e	7	N w s e	Jan. 11, '64
Same	3 s	8 e	7	S w s e	do. 11, '64
Same	3 s	8 e	7	S e s e	do. 28, '64
Wm. I. Meeks	3 s	8 e	8	S w s w	Feb. 19, 1859
Same	3 s	8 e	8	S e s w	Feb. 19, 1859
W. A. Atterberry	3 s	8 e	17	N e n w	Dec. 8, '63
N. S. Meeks	3 s	8 e	17	N w n w	do. 9, '63
Wm. White	3 s	8 e	17	S w n w	do. 19, '63
J. H. Smith	3 s	8 e	17	N w s e	Feb. 22, '64
Wm. Smith	3 s	8 e	17	S w s w	Dec. 30, '64
Michael Arnold	1 s	9 e	3	S e s w	do. 8, 1863
V. R. Price	1 s	9 e	6	N w s e	Nov. 26, '64
Same	1 s	9 e	6	S w s e	do. 26, '64
Thomas Nesbit	1 s	9 e	7	S w n e	M'ch 16, '65

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	1 s	9 e	7	S e n e	M'ch 16, '65
Same	1 s	9 e	7	N e n w	M'ch 16, '65
J. H. Walker	1 s	9 e	7	N w n w	Jan. 16, '65
Thomas Nesbit	1 s	9 e	7	S w n w	M'ch 16, '65
Same	1 s	9 e	7	S e n w	do. 16, '65
Same	1 s	9 e	7	N e s w	do. 16, '65
Same	1 s	9 e	7	N w s w	do. 16, '65
Same	1 s	9 e	7	S w s w	do. 16, '65
Same	1 s	9 e	7	S e s w	do. 16, '65
Same	1 s	9 e	7	N e s e	do. 16, '65
Same	1 s	9 e	7	N w s e	do. 16, '65
Same	1 s	9 e	7	S w s e	do. 16, '65
Same	1 s	9 e	7	S e s e	do. 16, '65
J. J. R. Turney	1 s	9 e	8	N w n w	Dec. 2, '67
G. W. Ramsey	1 s	9 e	8	S w n w	Feb. 22, '65
Dan'l Spitler	1 s	9 e	10	N w n e	Jan. 3, '65
Geo. W. Ramsey	1 s	9 e	10	S w n e	Feb. 20, '65
Michael Arnold	1 s	9 e	10	N e n w	Dec. 8, '63
Alfred Orr	1 s	9 e	10	N e s w	May 12, '64
C. P. Fitch	1 s	9 e	10	S e s w	Nov. 29, '64
Thos. Nesbit	1 s	9 e	10	N e s e	do. 3, '65
Same	1 s	9 e	10	N w s e	do. 3, '65
C. P. Fitch	1 s	9 e	10	S w s e	do. 29, '64
M. M. Doyle	1 s	9 e	13	N e s w	do. 19, 1860
Same	1 s	9 e	13	S w s w	do. 19, 1860
Cyrus Oakly	1 s	9 e	13	S w s e	Jan. 12, '64
C. A. Worley	1 s	9 e	17	N w n w	Oct. 27, '63
Joseph Enterken	1 s	9 e	17	N e s e	Oct. 27, '63
Jacob Hall	1 s	9 e	19	S w n e	Nov. 30, '67
Same	1 s	9 e	19	S e n e	do. 30, '67
Edward Fulton	1 s	9 e	19	N e n w	do. 5, '67
E. W. Brown	1 s	9 e	19	S w n w	Dec. 26, 1862
Wm. Murfitt	1 s	9 e	19	S e n w	Jan. 21, '64
Jacob Hall	1 s	9 e	19	N e s e	Nov. 30, '67
Same	1 s	9 e	19	N w s e	do. 30, '67
Boggs Cannon	1 s	9 e	19	S w s e	M'ch 19, '64
Jacob Hall	1 s	9 e	19	S e s e	Nov. 30, '67
Dan. Haynes	1 s	9 e	20	S e n e	do. 30, '67
G. J. George	1 s	9 e	20	N w s w	do. 30, '67
Same	1 s	9 e	20	S w s w	do. 30, '67
D. Haynes	1 s	9 e	20	N e s e	do. 30, '67
Same	1 s	9 e	20	N w s e	do. 30, '67
G. J. George	1 s	9 e	20	S w s e	do. 30, '67
W. H. Spitler	1 s	9 e	21	N w n e	do. 10, '64
Vine Shelton	1 s	9 e	21	S w n e	do. 28, '64

Def'ts' Ex. "*M*"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	1 s	9 e	21	N e n w	July 6, '64
662 J. McFetridge	1 s	9 e	21	N w n w	Jan. 21, 1866
L. T. Endsley	1 s	9 e	21	S w n w	May 2, 1867
V. Shelton	1 s	9 e	21	S e n w	Dec. 5, '64
Jas. C. Endsley	1 s	9 e	21	N e s w	May 19, 1866
Same	1 s	9 e	21	N w s w	do. 19, 1866
S. J. R. Wilson	1 s	9 e	21	S w s w	Nov. 20, '65
Jas. C. Endsley	1 s	9 e	21	S e s w	May 19, '66
A. M. McKinney	1 s	9 e	24	S e s w	Dec. 26, '63
Cornelius Bunting	1 s	9 e	24	N w s e	Nov. 28, '67
Same	1 s	9 e	24	S w s e	do. 28, '67
Samuel Book	1 s	9 e	25	N w n e	Dec. 22, '63
Geo. W. Bailey	1 s	9 e	25	S w n e	Nov. 28, '67
Wm. McKiney	1 s	9 e	25	N w n w	do. 26, '64
Alex. McKinney	1 s	9 e	25	S w n w	Dec. 26, '63
J. Waide	1 s	9 e	25	N e s w	do. 21, '63
Same	1 s	9 e	25	N w s w	do. 21, '63
James Simms	1 s	9 e	26	N e n e	Jan. 14, 1863
Wm. Conaway	1 s	9 e	26	S e n e	Dec. 10, '63
R. P. Hanna	1 s	9 e	26	N e n w	May 10, 1859
W. M. Havens	1 s	9 e	26	S e n w	Dec. 30, '63
S. J. R. Wilson	1 s	9 e	26	N w s w	May 8, '67
John Conaway	1 s	9 e	26	S w s w	Dec. 30, '63
Wm. Conaway	1 s	9 e	26	S e s w	do. 9, ——
J. Waide	1 s	9 e	26	N e s e	do. 21, '63
Wm. Conway	1 s	9 e	26	N w s e	do. 10, '63
Same	1 s	9 e	26	S w s e	do. 9, ——
Same	1 s	9 e	26	S e s e	do. 10, '63
S. J. R. Wilson	1 s	9 e	28	N w n w	Nov. 20, '65
James Crews	1 s	9 e	28	S w n w	do. 13, 1864
Same	1 s	9 e	29	S e n e	M'ch 2, '67
S. J. R. Wilson	1 s	9 e	29	N w s w	July 1, '64
Same	1 s	9 e	29	S w s w	do. 1, '64
J. A. Paul	1 s	9 e	30	N w n e	Sep. 6, '64
Mathew Crews	1 s	9 e	31	S w s w	June 8, 1857
Same	1 s	9 e	31	S e s w	do. 8, 1857
Wm. Crews, Jr.	1 s	9 e	31	N e s e	do. 22, '57
B. R. Crews	1 s	9 e	31	S w s e	Dec. 23, '62
Thurmutis Crews	1 s	9 e	32	N w n w	Jan. 2, '65
B. R. Crews	1 s	9 e	32	S w n w	Jan. 14, '65
Thos. St. Leger	1 s	9 e	32	N w s e	Dec. 21, '63
R. P. Hanna	1 s	9 e	34	N e n e	June 18, 1858
W. H. Robinson	1 s	9 e	34	N w n e	Feb. 7, 1859
Thos. St. Leger	1 s	9 e	34	S w n e	Dec. 12, 1856
R. P. Hanna	1 s	9 e	34	S e n e	June 18, 1856

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Wm. Chapman	1 s	9 e	34	S w n w	Dec. 21, '63
Thos. St. Leger	1 s	9 e	34	N e s e	do. 21, '63
R. P. Hanna	1 s	9 e	34	S e s e	Oct. 7, 1867
Same	1 s	9 e	35	N w n w	M'ch 13, 1858
T. St. Leger	1 s	9 e	35	S w n w	Sep. 19, 1857
W. H. Robinson	1 s	9 e	35	N e s w	Feb. 7, 1859
John Reed	1 s	9 e	35	S e s w	do. 20, '65
R. P. Hanna	1 s	9 e	35	N e s e	M'ch 13, 1858
Same	1 s	9 e	35	N w s e	do. 20, 1858
Geo. Green	1 s	9 e	35	S w s e	Jan. 21, '64
R. P. Hanna	1 s	9 e	35	S e s e	Dec. 30, '63
James Simms	1 s	9 e	36	S w n e	Jan. 14, 1863
Same	1 s	9 e	36	S e n e	Aug. 21, 1863
Wm. Walker	1 s	9 e	36	N e s w	Jan. 14, 1863
Same	1 s	9 e	36	N w s w	Jan. 14, 1863
Same	1 s	9 e	36	S w s w	Sep. 29, 1866
Wm. McKibbin	1 s	9 e	36	N e s e	Dec. 10, '63
Same	1 s	9 e	36	N w s e	Jan. 26, '65
A. J. Jett	1 s	9 e	36	S w s e	do. 7, '65
Wm. McKibbin	1 s	9 e	36	S e s e	Dec. 10, '63
S. A. Skinner	2 s	9 e	1	N e n e	Jan. 27, '63
Ben. Skinner	2 s	9 e	1	N w n e	Dec. 5, '63
B. D. Skinner	2 s	9 e	1	S w n e	Feb. 10, 1863
Wm. Chapman	2 s	9 e	1	S w n w	Dec. 8, 1863
Same	2 s	9 e	1	S e n w	Dec. 8, 1863
John Reed	2 s	9 e	2	N e n w	Feb. 20, '65
Robert Thread	2 s	9 e	2	N w n w	Dec. 5, '63
Dan. McCollom	2 s	9 e	2	S w n w	Sep. 14, '63
Same	2 s	9 e	2	S e n w	Sep. 14, '63
Same	2 s	9 e	2	N e s w	Sep. 14, '63
Same	2 s	9 e	2	N w s w	Sep. 14, '63
Milcene Fortner	2 s	9 e	2	N e s e	Nov. 4, '64
Charles Smith	2 s	9 e	3	N e n e	Jan. 21, '64
James Coursey	2 s	9 e	3	S e n e	Oct. 18, '67
B. F. Cowlin	2 s	9 e	3	N e n w	Aug. 25, 1859
Same	2 s	9 e	3	N w n w	do. 25, 1859
Sam. Briscoe	2 s	9 e	3	S w n w	Sep. 9, 1867
Preston R. King	2 s	9 e	3	S e n w	Dec. 7, '63
James R. Coursey	2 s	9 e	3	N e s e	Oct. 18, 1867
P. King	2 s	9 e	3	S w s e	Feb. 8, '63
W. H. Fortner	2 s	9 e	4	N e n e	Jan. 21, '64
J. J. R. Turney	2 s	9 e	4	S w n e	Dec. 2, '67
R. P. Hana	2 s	9 e	4	S e n e	do. 8, '64
Susan J. Cook	2 s	9 e	4	N e n w	do. 5, '63
S. J. R. Wilson	2 s	9 e	4	N e s w	Jan. 8, '67

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	2 s	9 e	4	N w s w	Jan. 8, '67
Same	2 s	9 e	4	S w s w	do. 8, '67
Same	2 s	9 e	4	S e s w	do. 8, '67
Wm. Fortner	2 s	9 e	4	N e s e	Dec. 5, '63
Jas. M. Green	2 s	9 e	4	N w s e	do. 5, '63
Same	2 s	9 e	4	S w s e	do. 5, '63
W. L. Gash	2 s	9 e	8	S w s w	Dec. 11, '63
McCawley	2 s	9 e	9	N w n w	Oct. 19, '65
Same	2 s	9 e	9	S w n w	Oct. 19, '65
Same	2 s	9 e	10	N e n e	Oct. 19, '65
Same	2 s	9 e	10	S w n e	Oct. 19, '65
Same	2 s	9 e	10	S e n e	Oct. 19, '65
R. C. Fowler	2 s	9 e	10	N e n w	Oct. 14, 1864
D. K. Fowler	2 s	9 e	10	N w n w	Nov. 26, 1864
Same	2 s	9 e	10	S w n w	Nov. 26, 1864
R. C. Fowler	2 s	9 e	10	S e n w	Oct. 14, 1864
McCawley	2 s	9 e	10	N e s w	Oct. 19, '65
Same	2 s	9 e	10	S e s w	Oct. 19, '65
Same	2 s	9 e	10	N e s e	Oct. 19, '65
Same	2 s	9 e	10	N w s e	Oct. 19, '65
Same	2 s	9 e	10	S w s e	Oct. 19, '65
Same	2 s	9 e	10	S e s e	Oct. 19, '65
Same	2 s	9 e	11	N e n e	Oct. 19, '65
Same	2 s	9 e	11	N w n e	Oct. 19, '65
Same	2 s	9 e	11	S w n e	Oct. 19, '65
Same	2 s	9 e	11	S e n e	Oct. 19, '65
Same	2 s	9 e	11	N e n w	Oct. 19, '65
Same	2 s	9 e	11	N w n w	Oct. 19, '65
Same	2 s	9 e	11	S w n w	Oct. 19, '65
Same	2 s	9 e	11	S e n w	Oct. 19, '65
Same	2 s	9 e	11	N e s w	Oct. 19, '65
Same	2 s	9 e	11	N w s w	Oct. 19, '65
Same	2 s	9 e	11	S w s w	Oct. 19, '65
Same	2 s	9 e	11	S e s w	Oct. 19, '65
Same	2 s	9 e	12	N e n w	Oct. 19, '65
Same	2 s	9 e	12	N w n w	Oct. 19, '65
Same	2 s	9 e	12	S w n w	Oct. 19, '65
Same	2 s	9 e	12	S e n w	Oct. 19, '65
Same	2 s	9 e	12	N w s w	Oct. 19, '65
Same	2 s	9 e	12	S w s w	Oct. 19, '65
Nathan E. Roberts	2 s	9 e	13	N e n w	Apr. 26, 1858
McCawley	2 s	9 e	13	N w n w	Oct. 19, '65
Roberts, N. E.	2 s	9 e	14	N e n e	Apr. 28, 1858
McCawley	2 s	9 e	14	N w n e	Oct. 19, '65
Same	2 s	9 e	14	N e n w	Oct. 19, '65

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	2 s	9 e	14	N w n w	Oct. 19, '65
Same	2 s	9 e	15	N e n e	Oct. 19, '65
Same	2 s	9 e	15	N w n e	Oct. 19, '65
Same	2 s	9 e	15	S w n e	Oct. 19, '65
Same	2 s	9 e	15	S e n e	Oct. 19, '65
Same	2 s	9 e	15	N e n w	Oct. 19, '65
Same	2 s	9 e	15	N w n w	Oct. 19, '65
Same	2 s	9 e	15	S w n w	Oct. 19, '65
Same	2 s	9 e	15	S e n w	Oct. 19, '65
Same	2 s	9 e	15	N e s w	Oct. 19, '65
Same	2 s	9 e	15	N w s w	Oct. 19, '65
Same	2 s	9 e	15	S w s w	Oct. 19, '65
Same	2 s	9 e	15	S e s w	Oct. 19, '65
Same	2 s	9 e	17	N w n e	Oct. 19, '65
Same	2 s	9 e	17	S w n e	Oct. 19, '65
Geo. W. Gash	2 s	9 e	17	N e n w	Jan. 13, 1858
663 A. L. Smith	2 s	9 e	17	S e s e	Oct. 7, 1861
McCawley	2 s	9 e	18	N e n w	Oct. 19, 1865
Same	2 s	9 e	20	N e n e	do. 19, 1865
Same	2 s	9 e	20	S e n e	do. 19, 1865
Same	2 s	9 e	20	N e s e	do. 19, 1865
Same	2 s	9 e	20	S e s e	do. 19, 1865
Same	2 s	9 e	21	N e n e	do. 19, 1865
Same	2 s	9 e	21	N w n e	do. 19, 1865
Same	2 s	9 e	21	S w n e	do. 19, 1865
Same	2 s	9 e	21	S e n e	do. 19, 1865
Same	2 s	9 e	21	N e n w	do. 19, 1865
Same	2 s	9 e	21	N w n w	do. 19, 1865
Same	2 s	9 e	21	S w n w	do. 19, 1865
Same	2 s	9 e	21	S e n w	do. 19, 1865
Same	2 s	9 e	21	N e s w	do. 19, 1865
Same	2 s	9 e	21	N w s w	do. 19, 1865
Same	2 s	9 e	22	N e n w	do. 19, 1865
Same	2 s	9 e	22	N w n w	do. 19, 1865
Same	2 s	9 e	22	S w n w	do. 19, 1865
John J. Scott	2 s	9 e	26	S e s w	Apr. 15, 1864
McCawley	2 s	9 e	27	N w s w	Oct. 19, 1865
Same	2 s	9 e	27	S w s w	Oct. 19, 1865
Same	2 s	9 e	27	S e s w	do. 19, 1865
Same	2 s	9 e	28	S w n e	do. 19, 1865
Sanf'd Greathouse	2 s	9 e	28	S e n e	Sep. 7, 1857
McCawley	2 s	9 e	28	N e n w	Oct. 19, '65
Same	2 s	9 e	28	N w n w	do. 19, '65
Same	2 s	9 e	28	S w n w	do. 19, '65
Same	2 s	9 e	28	S e n w	do. 19, '65

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	2 s	9 e	26	N w s w	Oct. 19, '65
Same	2 s	9 e	28	N e s w	Oct. 19, 1865
Same	2 s	9 e	28	N w s w	do. 19, 1865
Same	2 s	9 e	28	S w s w	do. 19, 1865
Same	2 s	9 e	28	S e s w	do. 19, 1865
Same	2 s	9 e	28	N e s e	do. 19, 1865
Same	2 s	9 e	28	N w s e	do. 19, 1865
Same	2 s	9 e	28	S w s e	do. 19, 1865
Same	2 s	9 e	28	S e s e	do. 19, 1865
Same	2 s	9 e	29	N e n e	do. 19, 1865
Same	2 s	9 e	29	N w n e	do. 19, 1865
Same	2 s	9 e	29	S w n e	do. 19, 1865
Same	2 s	9 e	29	S e n e	do. 19, 1865
John M. Harris	2 s	9 e	29	N e s w	July 31, 1856
Same	2 s	9 e	29	S w s w	Feb. 26, 1859
J. H. Harris	2 s	9 e	29	S e s w	Apr. 13, 1863
McCawley	2 s	9 e	29	N e s e	Oct. 19, 1865
Same	2 s	9 e	29	N w s e	do. 19, 1865
Same	2 s	9 e	29	S w s e	do. 19, 1865
Same	2 s	9 e	29	S e s e	do. 19, 1865
Wiley Hooper	2 s	9 e	30	S w n w	Feb. 8, '65
R. B. Slocumb	2 s	9 e	30	N w s w	Feb. 8, '65
McCawley	2 s	9 e	30	S w s w	Oct. 19, 1865
R. Mason	2 s	9 e	30	S e s w	Dec. 11, '63
John M. Harris	2 s	9 e	30	S w s e	Apr. 13, '63
McCawley	2 s	9 e	30	S e s e	Oct. 19, 1865
R. S. Haues	2 s	9 e	31	S e n e	Aug. 4, 1856
McCawley	2 s	9 e	31	N e n w	Oct. 19, 1865
John T. Lock	2 s	9 e	31	N w n w	Apr. 4, '64
McCawley	2 s	9 e	32	N e n e	Oct. 19, 1865
Same	2 s	9 e	32	N w n e	Oct. 19, 1865
Same	2 s	9 e	32	S w n e	Oct. 19, 1865
Same	2 s	9 e	32	S e n e	Oct. 19, 1865
John M. Harris	2 s	9 e	32	S w n w	Apr. 13, '63
Isaac Merrit	2 s	9 e	32	N e s w	Nov. 19, '63
McCawley	2 s	9 e	32	N w s w	Oct. 19, 1865
Isaac Merritt	2 s	9 e	32	S e s w	Nov. 19, '63
McCawley	2 s	9 e	32	N e s e	Oct. 19, 1865
Same	2 s	9 e	32	N w s e	do. 19, 1865
Same	2 s	9 e	32	S w s e	do. 19, 1865
Same	2 s	9 e	32	S e s e	do. 19, 1865
Same	2 s	9 e	33	N e n e	do. 19, 1865
Same	2 s	9 e	33	N w n e	do. 19, 1865
Same	2 s	9 e	33	S w n e	do. 19, 1865
Same	2 s	9 e	33	S e n e	do. 19, 1865

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	2 s	9 e	33	N e n w	Oct. 19, 1865
McCawley	2 s	9 e	33	N w n w	Oct. 19, 1865
Same	2 s	9 e	33	S w n w	do. 19, 1865
Same	2 s	9 e	33	S e n w	do. 19, 1865
Same	2 s	9 e	33	N e s w	do. 19, 1865
Same	2 s	9 e	33	N w s w	do. 19, 1865
Same	2 s	9 e	33	S w s w	do. 19, 1865
Same	2 s	9 e	33	S e s w	do. 19, 1865
Same	2 s	9 e	33	N e s e	do. 19, 1865
Same	2 s	9 e	33	N w s e	do. 19, 1865
Same	2 s	9 e	33	S w s e	do. 19, 1865
Same	2 s	9 e	33	S e s e	do. 19, 1865
Jeremiah Allison	2 s	9 e	34	N e n e	Aug. 27, 1857
Same	2 s	9 e	34	N w n e	do. 27, 1857
McCawley	2 s	9 e	34	S w n e	Oct. 19, 1865
Same	2 s	9 e	34	S e n e	do. 19, 1865
Same	2 s	9 e	34	N e n w	do. 19, 1865
Same	2 s	9 e	34	N w n w	do. 19, 1865
Same	2 s	9 e	34	S w n w	do. 19, 1865
Same	2 s	9 e	34	S e n w	do. 19, 1865
Same	2 s	9 e	34	N e s w	do. 19, 1865
Same	2 s	9 e	34	N w s w	do. 19, 1865
Same	2 s	9 e	34	S w s w	do. 19, 1865
Same	2 s	9 e	34	S e s w	do. 19, 1865
Same	2 s	9 e	34	N e s e	do. 19, 1865
Same	2 s	9 e	34	N w s e	do. 19, 1865
Same	2 s	9 e	34	S w s e	do. 19, 1865
Same	2 s	9 e	34	S e s e	do. 19, 1865
Same	2 s	9 e	35	N e n w	do. 19, 1865
Same	2 s	9 e	35	N w n w	do. 19, 1865
W. Potter	2 s	9 e	35	S w n w	Nov. 26, 1859
McCawley	2 s	9 e	35	N w s w	Oct. 19, 1865
Same	2 s	9 e	35	S w s w	do. 19, 1865
Same	2 s	9 e	35	S e s w	do. 19, 1865
Same	2 s	9 e	36	N e s e	do. 19, 1865
John J. Scott	2 s	9 e	36	S e s e	Apr. 15, 1864
McCawley	3 s	9 e	1	N e n e	May 7, '64
T. H. B. Stroman	3 s	9 e	1	S w n e	July 30, 1863
McCawley	3 s	9 e	1	S w s w	May 7, 1864
Same	3 s	9 e	1	S e s w	May 7, 1864
Same	3 s	9 e	1	N e s e	do. 7, 1864
T. H. B. Struman	3 s	9 e	1	N w s e	July 30, 1863
Same	3 s	9 e	1	S w s e	do. 30, 1863
McCawley	3 s	9 e	1	S e s e	May 7, 1864
Same	3 s	9 e	2	N w n e	do. 7, 1864

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	3 s	9 e	2	S w n e	May 7, 1864
M. Terrill	3 s	9 e	2	N e n w	Apr. 11, '64
McCawley	3 s	9 e	2	N w n w	May 7, '64
Same	3 s	9 e	2	S w n w	do. 7, '64
M. Terrill	3 s	9 e	2	S e n w	Apr. 11, '64
James Stroman	3 s	9 e	2	S w s w	Sep. 24, '63
McCawley	3 s	9 e	2	N e s e	May 7, '64
Same	3 s	9 e	2	N w s e	do. 7, '64
Same	3 s	9 e	2	S w s e	do. 7, '64
Same	3 s	9 e	2	S e s e	do. 7, '64
Same	3 s	9 e	3	N e n e	do. 7, '64
Same	3 s	9 e	3	N w n e	do. 7, '64
Same	3 s	9 e	3	S w n e	do. 7, '64
Same	3 s	9 e	3	S e n e	do. 7, '64
Samuel Rodgers	3 s	9 e	3	N e n w	Apr. 4, '64
Rob't Fraum	3 s	9 e	3	N w n w	M'ch 3, '64
James M. Byrum	3 s	9 e	3	S w n w	do. 3, '64
Sam'l Rogers	3 s	9 e	3	S e n w	Apr. 4, '64
E. Terrill	3 s	9 e	3	N e s w	M'ch 3, '64
T. J. Foster	3 s	9 e	3	N w s w	do. 3, '64
McCawley	3 s	9 e	3	S w s w	May 7, '64
E. Terrill	3 s	9 e	3	S e s w	M'ch 3, '64
James Stuman	3 s	9 e	3	S w s e	Sep. 24, '63
Same	3 s	9 e	3	S e s e	do. 24, '63
Robert Fraum	3 s	9 e	4	N e n e	M'ch 3, '64
E. W. Oakley	3 s	9 e	4	N w n e	Jan. 27, '64
Same	3 s	9 e	4	S w n e	Jan. 27, '64
Jas. M. Byrum	3 s	9 e	4	S e n e	M'ch 3, '64
P. Campbell	3 s	9 e	4	N e n w	Nov. 27, '63
Same	3 s	9 e	4	S e n w	Nov. 27, '63
Riley Harris	3 s	9 e	4	S e s w	Apr. 23, 1857
664 T. J. Foster	3 s	9 e	4	N e s e	M'ch 3, '64
O. H. Deval	3 s	9 e	4	N w s e	Feb. 10, 1864
Ed. Walker	3 s	9 e	4	S w s e	Feb. 8, 1864
McCawley	3 s	9 e	4	S e s e	May 7, '64
Same	3 s	9 e	5	N e n e	May 7, '64
A. Merritt	3 s	9 e	7	N e s w	M'ch 21, '64
Same	3 s	9 e	7	S e s w	M'ch 21, '64
John Johnson	3 s	9 e	7	S w s e	Feb. 24, '64
M. M. Wheeler	3 s	9 e	8	N e s w	Aug. 3, 1860
Jos. Chrisman	3 s	9 e	8	S w s w	M'ch 28, '64
McCawley	3 s	9 e	9	N e n e	May 7, '64
Wm. Stewart	3 s	9 e	9	N w n e	Apr. 5, '64
Milton Cravens	3 s	9 e	9	S w n e	Feb. 24, 1864
E. J. Cravens	3 s	9 e	9	S e n e	M'ch 29, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Tyra J. Stanley	3 s	9 e	9	N e n w	Apr. 20, 1857
Same	3 s	9 e	9	S e n w	Apr. 20, 1857
D. M. Walker	3 s	9 e	9	N e s w	May 8, 1857
Same	3 s	9 e	9	S e s w	May 8, 1857
Hardey Rhodes	3 s	9 e	9	N e s e	Dec. 7, '63
E. J. Cravens	3 s	9 e	9	N w s e	Feb. 24, '64
McCawley	5 s	9 e	9	S w s e	May 7, 1864
Hardey Rhodes	3 s	9 e	9	S e s e	Dec. 7, '63
Jas. Strauman	3 s	9 e	10	N e n e	Sep. 24, '63
Same	3 s	9 e	10	N w n e	do. 24, '63
Same	3 s	9 e	10	S w n e	do. 24, '63
Same	3 s	9 e	10	S e n e	do. 24, '63
McCawley	3 s	9 e	10	N e n w	May 7, '64
Same	3 s	9 e	10	N w n w	do. 7, '64
Same	3 s	9 e	10	S w n w	do. 7, '64
Same	3 s	9 e	10	S e n e	do. 7, '64
Same	3 s	9 e	10	N e s w	do. 7, '64
Same	3 s	9 e	10	N w s w	do. 7, '64
Same	3 s	9 e	10	S w s w	do. 7, '64
Same	3 s	9 e	10	S e s w	do. 7, '64
Same	3 s	9 e	11	N e n e	do. 7, '64
Same	3 s	9 e	11	N w n e	do. 7, '64
Same	3 s	9 e	11	S w n e	do. 7, '64
J. Strauman	3 s	9 e	10	N e s e	Sep. 24, '63
Same	3 s	9 e	10	N w s e	do. 24, '63
Same	3 s	9 e	10	S w s e	do. 24, '63
Same	3 s	9 e	10	S e s e	do. 24, '63
Same	3 s	9 e	11	N w n w	do. 24, '63
Same	3 s	9 e	11	S w n w	do. 24, '63
McCawley	3 s	9 e	11	S e n w	May 7, '64
Jas. Strauman	3 s	9 e	11	N w s w	Sep. 24, '63
Same	3 s	9 e	11	S w s w	Sep. 24, '63
McCawley	3 s	9 e	11	N e s e	May 7, 1864
Same	3 s	9 e	11	N w s e	May 7, 1864
J. Funkhouser	3 s	9 e	11	S w s e	M'ch 21, '64
McCawley	3 s	9 e	11	S e s e	May 7, '64
Same	3 s	9 e	12	N e n e	do. 7, '64
Same	3 s	9 e	12	N w n e	do. 7, '64
Same	3 s	9 e	12	S w n e	do. 7, '64
Same	3 s	9 e	12	S e n e	do. 7, '64
Same	3 s	9 e	12	N e n w	do. 7, '64
Same	3 s	9 e	12	N w n w	do. 7, '64
Same	3 s	9 e	12	S w n w	do. 7, '64
Same	3 s	9 e	12	S e n w	do. 7, '64
Same	3 s	9 e	12	N e s w	do. 7, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	3 s	9 e	12	N w s w	May 7, '64
Same	3 s	9 e	12	S w s w	do. 7, '64
Same	3 s	9 e	12	S e s w	do. 7, '64
Same	3 s	9 e	12	N e s e	do. 7, '64
Same	3 s	9 e	12	N w s e	do. 7, '64
Same	3 s	9 e	12	S w s e	M'ch 7, '64
Same	3 s	9 e	12	S e s e	do. 7, '64
J. Funkhouser	3 s	9 e	13	N e n e	do. 21, '64
Same	3 s	9 e	13	N w n e	do. 21, '64
Same	3 s	9 e	13	S w n e	do. 21, '64
Same	3 s	9 e	13	S e n e	do. 21, '64
Same	3 s	9 e	13	N e n w	do. 21, '64
Same	3 s	9 e	13	N w n w	do. 21, '64
Same	3 s	9 e	13	S w n w	do. 21, '64
Same	3 s	9 e	13	S e n w	do 21, '64
McCawley	3 s	9 e	13	N e s w	Oct. 19, '65
McCawley	3 s	9 e	13	N w s w	do. 19, '65
Same	3 s	9 e	13	S w s w	do. 19, '65
Same	3 s	9 e	13	S e s w	do. 19, '65
Same	3 s	9 e	13	N e s e	do. 19, '65
Same	3 s	9 e	13	N w s e	do. 19, '65
Same	3 s	9 e	13	S w s e	do. 19, '65
Same	3 s	9 e	13	S e s e	do. 19, '65
J. Funkhouser	3 s	9 e	14	S w n e	M'ch 21, '64
Same	3 s	9 e	14	S e n e	do. 21, '64
Same	3 s	9 e	14	N w n w	do. 21, '64
Same	3 s	9 e	14	S w n w	do. 21, '64
Same	3 s	9 e	14	S e n w	do. 21, '64
McCawley	3 s	9 e	14	N e s w	Oct. 19, '65
James Struman	3 s	9 e	14	N w s w	Sep. 24, '63
Same	3 s	9 e	14	S w s w	do. 24, '63
McCawley	3 s	9 e	14	S e s w	Oct. 19, '65
Same	3 s	9 e	14	N e s e	do. 19, '65
Same	3 s	9 e	14	N w s e	do. 19, '65
Same	3 s	9 e	14	S w s e	do. 19, '65
Same	3 s	9 e	14	S e s e	do. 19, '65
Jas. Struman	3 s	9 e	15	N e n e	Sep. 24, '63
Same	3 s	9 e	15	N w n e	do. 24, '63
Same	3 s	9 e	15	S w n e	do. 24, '63
Same	3 s	9 e	15	S e n e	do. 24, '63
Landen C. Kelley	3 s	9 e	15	N e n w	Oct. 6, '63
Same	3 s	9 e	15	N w n w	do. 6, '63
Same	3 s	9 e	15	S w n w	do. 6, '63
Same	3 s	9 e	15	S e n w	do. 6, '63
Same	3 s	9 e	15	N e s w	do. 6, '63

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Hardy Rhodes	3 s	9 e	15	N w s w	Sep. 11, 1857
Kelly	3 s	9 e	15	S w s w	
Landen C. Kelly	3 s	9 e	15	S e s w	Oct. 6, '63
McCawley	3 s	9 e	15	N e s e	do. 19, '65
Landen C. Kelly	3 s	9 e	15	N w s e	do. 6, '63
Same	3 s	9 e	15	S w s e	do. 6, '63
McCawley	3 s	9 e	15	S e s e	do. 19, '65
John R. Odell	3 s	9 e	17	N w n w	M'ch 31, 1863
John Johnson	3 s	9 e	18	N e n e	Oct. 12, '63
Same	3 s	9 e	18	N w n e	do. 12, '63
Lewis Powless	1 n	5 e	2	S e s e	Dec. 27, 1862
Alney Hams	1 n	5 e	14	N w n e	Jan. 25, '64
J. Botthoff	1 n	5 e	14	S w n e	Jan. 13, '64
Lewis Burgess	1 n	5 e	14	N e n w	Sep. 21, '63
Joseph Borland	1 n	5 e	26	N e s w	Oct. 17, '64
Same	1 n	5 e	26	N w s w	do. 17, 1864
Same	1 n	5 e	26	S w s w	do. 17, 1864
Silas D. Jones	1 n	5 e	26	S e s e	Nov. 18, '63
W. H. Jones	1 n	5 e	27	S e s e	M'ch 8, 1866
Silas D. Jones	1 n	5 e	35	N w n e	Sep. 23, 1863
Joseph Borland	1 n	5 e	35	N w n w	Oct. 17, '64
Silas D. Jones	1 n	5 e	35	S w n w	Sep. 23, 1863
David C. Kimball	2 n	5 e	36	S w n e	Dec. 1, 1856
C. S. Elliot	2 n	5 e	36	S w s w	Nov. 25, '63
Same	2 n	5 e	36	S e s w	Nov. 25, '63
Thos. F. Hill	1 n	6 e	13	S e s e	Dec. 8, '63
Stephen Stine	1 n	6 e	13	S w n e	do. 8, '63
J. F. Pearce	1 n	6 e	13	S e n e	do. 24, '63
James Haught	1 n	6 e	25	S w n e	Jan. 10, 1863
Wm. Greathouse	1 n	6 e	35	N e n w	M'ch 30, 1863
H. & W. Greathouse	1 n	6 e	35	S e n w	Dec. 4, '63
C. C. Irwin	2 n	6 e	19	N e s e	Jan. 1, '66
Geo. Johnson	1 n	7 e	1	N e s e	June 2, '63
J. J. R. Turney	1 n	7 e	1	S w s e	Dec. 3, '64
Geo. Johnson	1 n	7 e	1	S e s e	June 2, '63
J. J. R. Turney	1 n	7 e	12	N w n e	
Same	1 n	7 e	12	S e n e	Dec. 3, '64
H. M. Neff	1 n	7 e	19	N e n w	Aug. 17, '63
Same	1 n	7 e	19	N w n w	do. 17, '63
L. M. Cisna	1 n	7 e	19	S w n w	Feb. 27, 1863
Same	1 n	7 e	19	S e n w	do. 27, 1863
Zach. Stephens	1 n	7 e	21	S w n e	Sep. 9, 1857
John Cisne	1 n	7 e	21	S e n w	July 18, 1856
Zach. Stephens	1 n	7 e	21	N w s e	Sep. 9, 1857
Samuel Hooper	1 n	7 e	27	S w n w	do. 20, 1855

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
James Simpson	1 n	7 e	28	N e n e	Sep. 15, '63
665 S. M. Harris	1 n	7 e	28	S w n e	
Z. Stephens	1 n	7 e	28	S e n e	Sep. 9, 1857
Q. Q. Wakefield	1 n	7 e	35	S w n e	Aug. 2, '64
R. A. Moss	1 n	7 e	36	S e n e	Sep. 16, '67
W. Henderson	2 n	7 e	22	N e s e	Feb. 15, '64
T. J. Pettyjohn	2 n	7 e	22	N w s e	do. 15, '64
W. F. Balley	2 n	7 e	23	S e n e	Sep. 23, '63
Samuel Blackledge	2 n	7 e	23	N w s w	Aug. 30, 1856
W. F. Balley	2 n	7 e	23	S e s w	Sep. 23, '63
Same	2 n	7 e	23	N e s e	do. 23, 1863
Same	2 n	7 e	23	N w s e	do. 23, 1863
Same	2 n	7 e	23	S w s e	do. 23, 1863
Same	2 n	7 e	24	S w n w	do. 23, 1863
Hugh Mills	2 n	7 e	24	N w s w	do. 23, 1863
Same	2 n	7 e	24	S w s w	do. 23, 1863
J. J. R. Turney	2 n	7 e	25	S w n w	Dec. 3, '64
J. W. Kindle	2 n	7 e	25	N e s w	Sep. 25, 1863
Same	2 n	7 e	25	N w s w	do. 25, 1863
Same	2 n	7 e	25	S w s e	do. 25, 1863
Hugh Mills	2 n	7 e	26	N e n e	do. 23, 1863
Clarinda Jardan	2 n	7 e	26	N e s e	Nov. 11, '63
W. J. Mays	2 n	7 e	36	N w n e	do. 24, '64
W. F. Bally	2 n	7 e	36	S w n e	Sep. 23, '63
Same	2 n	7 e	36	S e n e	do. 23, '63
Same	2 n	7 e	36	N e s e	do. 23, '63
Jas. E. Atteberry	1 n	8 e	5	S e s e	M'ch 31, 1863
J. J. R. Turney	1 n	8 e	6	Lot 1 n w	Dec. 3, '64
Calvin Keeton	1 n	8 e	7	S w n e	Jan. 22, '64
Conrad Kearn	1 n	8 e	7	N w n w	do. 2, '65
John Taylor	1 n	8 e	7	S w n w	Dec. 31, '64
A. B. McManama	1 n	8 e	8	S w s w	do. 8, '64
Same	1 n	8 e	8	S e s w	do. 8, '64
Edward Bonham	1 n	8 e	22	N e s w	Nov. 30, '67
Same	1 n	8 e	22	N w s w	do. 30, '67
Same	1 n	8 e	22	S w s w	do. 30, '67
Same	1 n	8 e	22	S e s w	do. 30, '67
W. J. Frazier	1 n	8 e	26	S e s e	do. 30, '67
Chas. Malt	1 n	8 e	28	N e n e	M'ch 6, '65
G. T. Humbusen	1 n	8 e	28	S e n e	do. 4, '65
W. Calder	1 n	8 e	28	N e n w	do. 6, '64
H. Holzhausen	1 n	8 e	32	S w s e	Feb. 15, '64
A. B. McManama	1 n	8 e	34	N e n e	Jan. 3, '64
Same	1 n	8 e	34	N w n e	do. 3, '64
Same	1 n	8 e	34	S w n e	do. 3, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	1 n	8 e	34	S e n e	Jan. 3, '64
Nathaniel Vasey	1 n	8 e	34	N e n w	M'ch 4, 1865
Same	1 n	8 e	34	N w n w	do. 4, 1865
Same	1 n	8 e	34	S w n w	do. 4, 1865
Same	1 n	8 e	34	S e n w	do. 4, 1865
Same	1 n	8 e	34	N e s w	do. 4, 1865
Same	1 n	8 e	34	N w s w	do. 4, 1865
Same	1 n	8 e	34	S w s w	do. 4, 1865
Same	1 n	8 e	34	S e s w	do. 4, 1865
A. B. McManama	1 n	8 e	34	N e s e	do. 4, 1865
Same	1 n	8 e	34	N w s e	do. 4, 1865
Same	1 n	8 e	34	S w s e	do. 4, 1865
Same	1 n	8 e	34	S e s e	do. 4, 1865
J. C. Borah	1 n	8 e	35	N e n e	Nov. 8, '64
J. B. Martin	1 n	8 e	35	S w n e	Dec. 12, '64
J. B. Borah	1 n	8 e	85	S e n e	Nov. 5, '64
J. B. Martin	1 n	8 e	35	S e n w	Dec. 12, '64
O. H. Martin	1 n	8 e	35	N w s e	do. 12, '64
D. D. Henderson	1 n	8 e	35	S w s e	do. 12, '64
Henry Frazer	1 n	8 e	36	N w n w	M'ch 16, '67
J. A. Creath	2 n	8 e	31	S w n w	Feb. 16, '64
Same	2 n	8 e	31	S e n w	do. 16, '64
Same	2 n	8 e	31	N h'f s w	do. 16, '64
Same	2 n	8 e	31	N e s e	do. 16, '64
Same	2 n	8 e	31	N w s e	do. 16, '64
Same	2 n	8 e	31	S e s e	do. 16, '64
John Watson	1 n	9 e	1	S w n w	Nov. 18, 1864
Austin Osterman	1 n	9 e	1	N w s w	Feb. 18, 1864
G. N. Wyatt	1 n	9 e	1	S w s w	May 7, 1864
Same	1 n	9 e	1	S e s w	do. 7, 1864
Austin Osterman	1 n	9 e	2	N w s e	Oct. 27, '63
Same	1 n	9 e	2	S e s e	Dec. 8, '63
Wm. McKinley	1 n	9 e	3	N e n w	May 3, 1867
Same	1 n	9 e	3	N w n w	do. 3, 1867
Benjamin Glick	1 n	9 e	4	N e s w	Dec. 23, '64
J. J. R. Turney	1 n	9 e	4	S e s w	M'ch 4, '65
Nath. Travis	1 n	9 e	9	N e n w	Jan. 25, 1858
John C. Camp	1 n	9 e	----	N e s w	Feb. 16, '63
A. J. Farleigh	1 n	9 e	9	S e s w	do. 2, '63
J. H. Galbraith	1 n	9 e	9	S w s e	M'ch 21, '64
Susanna Pharr	1 n	9 e	10	N e n w	Feb. 27, '64
W. B. Livingston	1 n	9 e	12	N e n w	Oct. 11, '65
Same	1 n	9 e	12	N w n w	do. 11, '65
Same	1 n	9 e	12	S w n w	do. 11, '65
Same	1 n	9 e	12	S e n w	do. 11, '65

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	1 n	9 e	12	N e s w	Oct. 11, '65
Same	1 n	9 e	12	N w s w	do. 11, '65
Same	1 n	9 e	12	S w s w	do. 11, '65
Same	1 n	9 e	12	S e s w	do. 11, '65
Same	1 n	9 e	12	N e s e	do. 11, '65
Same	1 n	9 e	12	N w s e	do. 11, '65
Same	1 n	9 e	12	S w s e	do. 11, '65
Same	1 n	9 e	12	S e s e	do. 11, '65
Charles Wood	1 n	9 e	14	S w s w	Dec. 30, '64
David Staser	1 n	9 e	15	N e n e	Oct. 1, 1863
Same	1 n	9 e	15	S e n e	do. 1, 1863
Cy. Blackburn	1 n	9 e	15	N e n w	Feb. 29, 64
M. Daub	1 n	9 e	15	N w n w	Oct. 15, '63
Charles Wood	1 n	9 e	23	N w n w	Dec. 30, '64
Wm. Hurdey	1 n	9 e	23	S e n w	June 8, 1865
Same	1 n	9 e	23	N e s w	do. 8, 1865
W. H. Daubs	1 n	9 e	23	S e s w	Feb. 24, 1863
John Curtis	1 n	9 e	25	S e s w	Nov. 18, ——
Wm. Hurdey	1 n	9 e	26	S e n w	June 8, 1865
Same	1 n	9 e	26	N e s w	do. 8, 1865
G. W. Ramsey	1 n	9 e	26	S w s w	Nov. 23, 1864
James H. Tarvis	1 n	9 e	34	N e n e	Feb. 1, 1858
Sam. McCollum	1 n	9 e	34	S e s w	Jan. 28, '64
John M. Sluder	1 n	9 e	34	N e s e	M'ch 21, '64
G. W. Ramsey	1 n	9 e	34	S w s e	Nov. 29, '64
E. E. Lenning	1 n	9 e	35	N e n w	Apr. 19, '66
Same	1 n	9 e	35	N w n w	do. 19, '66
John Curtis	1 n	9 e	36	N e n w	Nov. 18, '65
Same	1 n	9 e	36	S e s w	do. 18, '65
J. J. R. Turney	2 n	9 e	19	N e n e	M'ch 4, '65
S. W. Hughes	2 n	9 e	19	N w n e	Apr. 4, '64
W. S. Archibald	2 n	9 e	19	N w n w	Jan. 14, '64
C. G. Archibald	2 n	9 e	19	S e n w	do. 20, '64
J. C. Williams	2 n	9 e	19	N e s w	do. 13, '64
R. Wilson	2 n	9 e	19	S e s w	do. 16, '64
J. C. Williams	2 n	9 e	19	N w s e	do. 23, '64
R. Wilson	2 n	9 e	19	S w s e	do. 16, '64
J. C. Williams	2 n	9 e	19	S e s e	do. 13, '64
J. J. R. Turney	2 n	9 e	20	N w n w	M'ch 4, '65
James Lester	2 n	9 e	20	S w n w	Dec. 19, '64
H. W. Archibald	2 n	9 e	20	N e s w	M'ch 19, '67
Sam. McGammon	2 n	9 e	20	N w s w	Feb. 4, '64
Same	2 n	9 e	20	S w s w	Jan. 16, '64
W. C. Latimore	2 n	9 e	20	S e s w	Feb. 4, '64
Thos. Johnson	2 n	9 e	20	N w s e	M'ch 27, 1865

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
A. H. Bristow	2 n	9 e	21	S w s w	Jan. 18, 1865
Susan M. Ramsey	2 n	9 e	21	S e s w	Sep. 30, '63
Thos. Johnson	2 n	9 e	23	N e n e	Jan. 23, '64
Same	2 n	9 e	23	S e n e	Sep. 27, '64
Same	2 n	9 e	23	N e s e	do. 27, '64
J. Giles	2 n	9 e	23	S w s e	Dec. 16, '64
Same	2 n	9 e	23	S e s e	do. 16, '64
Same	2 n	9 e	24	N e n e	do. 16, '64
Same	2 n	9 e	24	N w n e	do. 16, '64
Same	2 n	9 e	24	S w n e	do. 16, '64
Same	2 n	9 e	24	S e n e	do. 16, '64
Same	2 n	9 e	24	N e n w	do. 16, '64
Same	2 n	9 e	24	N w n w	do. 16, '64
Same	2 n	9 e	24	S w n w	do. 16, '64
Same	2 n	9 e	24	S e n w	do. 16, '64
W. L. Beck	2 n	9 e	24	N e s w	Jan. 23, '66
666 W. L. Beck	2 n	9 e	24	N w s w	Jan. 23, '66
Same	2 n	9 e	24	S w s w	do. 23, '66
Same	2 n	9 e	24	S e s w	Jan. 23, '66
Same	2 n	9 e	25	N e n w	do. 23, '66
Same	2 n	9 e	25	N w n w	do. 23, '66
Same	2 n	9 e	25	S w n w	do. 23, '66
Same	2 n	9 e	25	S e n w	do. 23, '66
Same	2 n	9 e	25	N e s w	do. 23, '66
Same	2 n	9 e	25	N w s w	do. 23, '66
Same	2 n	9 e	25	S w s w	do. 23, '66
Same	2 n	9 e	25	S e s w	do. 23, '66
V. B. Wyatt	2 n	9 e	25	N e s e	M'ch 6, 1865
W. L. Beck	2 n	9 e	25	N w s e	Jan. 23, '66
Same	2 n	9 e	25	S w s e	do. 23, '66
Same	2 n	9 e	25	S e s e	do. 23, '66
Same	2 n	9 e	26	N e n e	do. 23, '66
Jud. Baker	2 n	9 e	26	N w n e	Nov. 2, '65
W. L. Beck	2 n	9 e	26	S e n e	Jan. 23, '66
James B. Varnes	2 n	9 e	28	N e n e	Dec. 12, '63
Alex. Ramsey	2 n	9 e	28	N e n w	Jan. 5, 1866
Geo. Covert	2 n	9 e	28	N e s w	Apr. 10, '67
Wm. Hurdey	2 n	9 e	28	N w s w	June 8, 1865
Same	2 n	9 e	28	S w s w	do. 8, 1865
Wm. McKinley	2 n	9 e	28	S e s w	May 3, 1867
L. Lick	2 n	9 e	28	N e s e	Jan. 13, '64
Geo. Covert	2 n	9 e	28	N w s e	Apr. 10, 1867
Wm. McKinley	2 n	9 e	28	S w s e	May 3, 1867
Same	2 n	9 e	28	S e s e	do. 3, 1867
W. C. Latimore	2 n	9 e	29	N w n e	Oct. 8, '64

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Geo. Wilson	2 n	9 e	29	S w n e	June 22, 1866
Nick Kepper	2 n	9 e	29	N e n w	M'ch 2, '64
R. Wilson	2 n	9 e	29	N w n w	Jan. 27, '64
E. Baird	2 n	9 e	29	S w n w	Feb. 22, '64
Sam. Sparks	2 n	9 e	29	S e n w	M'ch 5, '64
J. M. Armstrong	2 n	9 e	29	N w s w	Jan. 23, '64
Anderson Barnett	2 n	9 e	29	N e s e	Sep. 24, '66
D. W. Kennedy	2 n	9 e	29	S w s e	Feb. 8, '64
D. M. Latimore	2 n	9 e	30	N e n e	Jan. 14, '63
J. McLeary	2 n	9 e	30	S e n e	do. 23, '64
Jas. Nisbet	2 n	9 e	31	N w n e	Feb. 16, '64
Wm. A. Davis	2 n	9 e	32	N e n e	June 22, 1866
Same	2 n	9 e	32	N w n e	do. 22, 1866
J. J. R. Turney	2 n	9 e	32	S e n e	M'ch 4, '65
Wm. A. Davis	2 n	9 e	33	N e n e	June 22, 1866
Same	2 n	9 e	33	N w n e	do. 22, 1866
Wm. A. Davis	2 n	9 e	33	S w n e	June 22, 1866
Same	2 n	9 e	33	S e n e	do. 22, 1866
Same	2 n	9 e	33	N e n w	do. 22, 1866
Same	2 n	9 e	33	N w n w	do. 22, 1866
Same	2 n	9 e	33	S w n w	do. 22, 1866
Same	2 n	9 e	33	S e n w	do. 22, 1866
Same	2 n	9 e	33	N e s w	do. 22, 1866
J. H. Travese	2 n	9 e	34	N e n e	——, 1858
Wm. A. Davis	2 n	9 e	34	N w n e	June 22, 1866
Same	2 n	9 e	34	S w n e	do. 22, 1866
Same	2 n	9 e	34	S e n e	do. 22, 1866
Same	2 n	9 e	34	N e n w	do. 22, 1866
Same	2 n	9 e	34	N w n w	do. 22, 1866
Same	2 n	9 e	34	S w n w	do. 22, 1866
Same	2 n	9 e	34	S e n w	do. 22, 1866
Same	2 n	9 e	34	N e s w	do. 22, 1866
Same	2 n	9 e	34	N w s w	do. 22, 1866
Same	2 n	9 e	34	S w s w	do. 22, 1866
Same	2 n	9 e	34	S e s w	do. 22, 1866
Same	2 n	9 e	34	N e s e	do. 22, 1866
Same	2 n	9 e	34	N w s e	do. 22, 1866
Same	2 n	9 e	34	S w s e	do. 22, 1866
Andrew J. Crews	2 n	9 e	35	N w s w	Aug. 2, 1866
G. N. Wyatt	2 n	9 e	35	S w s w	Nov. 26, '64
Andrew J. Crews	2 n	9 e	35	S e s w	Aug. 2, 1866
W. L. Beck	2 n	9 e	36	N e n e	Jan. 22, 1866
Same	2 n	9 e	36	N w n e	do. 23, 1866
Same	2 n	9 e	36	S w n e	do. 23, 1866
Same	2 n	9 e	36	S e n e	do. 23, 1866

Def'ts' Ex. "M"—Continued.

Name of pur.	T.	R.	Sec.	Subdiv.	Date of pur.
Same	2 n	9 e	36	N e n w	Jan. 23, 1866
Same	2 n	9 e	36	N w n w	do. 23, 1866
Same	2 n	9 e	36	S w n w	do. 23, 1866
Same	2 n	9 e	36	S e n w	do. 23, 1866
Same	2 n	9 e	36	N e s w	do. 23, 1866
Same	2 n	9 e	36	N w s w	do. 23, 1868
Same	2 n	9 e	36	S w s w	do. 23, 1866
Same	2 n	9 e	36	S e s w	do. 23, 1866
Charles Wyatt	2 n	9 e	36	N e s e	Nov. 26, '64
Same	2 n	9 e	36	N w s e	do. 26, '64
James Sessions	1 n	5 e	11	S w n e	Dec. 4, 1863
Lewis Powless	1 n	5 e	11	N e n e	Aug. 31, '64
Same	1 n	5 e	11	S e n e	do. 21, '64
J. J. R. Turney	1 n	5 e	11	N w s e	Nov. 10, '64
Same	1 n	5 e	11	S w s e	do. 10, '64
Same	1 n	6 e	6	E h'f lot 1, n e	do. 10, '64

STATE OF ILLINOIS, } ss:
Wayne County, }

I, J. D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the above and foregoing is a correct copy of the swamp land entered by the above-named parties, with the numbers of the land and date of entry, as appears of record in my office.

In witness whereof I have hereunto set my hand and seal this 3d day of December, 1877.

J. D. SHAEFFER, *Co. Clerk.*

We agree to admit this exhibit as evidence, to have the same effect as if certified to by the clerk under his seal of office.

E. BEECHER,
Att'y for Compl't.

Fairfield, July 21, 1885.

(Endorsed:) Filed October 2d, 1885. J. A. Jones, clerk.

[Endorsed:] Exhibit "M." Circuit court United States, southern district Illinois. June term, A. D. 1874. B. B. Frost *et al. vs.* Wayne County and J. C. Kennicott *et al.* H. Tompkins, attorney.

667. DEF'TS' EX. "N."

Deed of Trust from County of Wayne — Charles Wood.

Deed of trust of Wayne county to Wood.

County Court, Wayne County,
to
Charles Wood.

This indenture, made and entered into this 13th day of March, in the year of our Lord one thousand eight hundred and fifty-six, by and between Daniel Turney, judge of the county court of Wayne county, Illinois; William Ellis, and Samuel Hooper, associate judge of said county court, of the first part, and Charles Wood, of said Wayne county, of the second part, witnesseth:

That whereas the Congress of the United States of America, on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty, passed an act entitled "An act to enable the State of Arkansas and other States to redeem the swamp lands within their limits," wherein was granted and donated to the State of Illinois all the unsold swamp and overflowed lands within the limits of said State; and

Whereas the Legislature of the State of Illinois, on the
668 twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two, passed an act entitled "An act to dispose of the swamp and overflowed lands and to pay the expenses of selecting and surveying the same," wherein was granted and donated to each of the several counties of the State of Illinois all the said swamp and overflowed lands lying, situated, and being within the limits and boundaries of each of said counties, severally and respect-;

And *the* whereas the Legislature of the State of Illinois, on the 15th day of February, in the year of our Lord one thousand eight hundred and fifty-five, passed an act entitled "An act to incorporate the Mount Vernon Railroad Company," wherein, amongst other things, it was provided, in the third section, that when an amount equal to one thousand dollars per mile of the route of said road is subscribed the subscribers may meet at Mount Vernon and elect seven directors; and whereas, there having been upwards of one thousand dollars per mile of said road subscribed, the stockholders met at
669 Mount Vernon, on the thirteenth day of November, 1855, and elected Walter B. Scates, John R. Allen, Downey Baugh, Newton R. Corey, John N. Johnson, Timothy Condit, and Hezekiah B. Newby directors of said company; and whereas afterwards, to wit, on the 14th day of November, 1855, at a meeting of said directors Walter B. Scates was elected president, Downey Baugh secretary, and John R. Allen treasurer of said company;

And whereas by said act of incorporation the county court of Jefferson county were authorized and empowered to subscribe for such

amount of the capital stock of said company as they may see proper; they may issue bonds of the county and provide for the payment of principal and interest thereof by sale or mortgage, one or both, of the swamp and overflowed lands of said county, or they may make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of such railroad as they may deem for the public interest of said county; the county cour- may at any regular or special term of said court order a special election to be held for the purpose of taking the sense of the qualified
670 voters of the county thereupon, giving such notice thereof as they may deem proper, and which shall be conducted, returns made, canvassed, and published in all other respects as other county elections; the county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, and distinct idea of the plan or plans proposed by them for aiding in constructing said railroad, which said propositions shall be printed at large on an election ticket, and the voters may express their will on said proposition by voting yea and nay on said ticket; and whereas said county court, at the — term, 1855, ordered an election to be held on the Tuesday after the first Monday in November, 1855;

And whereas at a special term of said Jefferson county court, held at Mount Vernon on the 17th day of August, 1855, it was ordered that the following proposition for the disposing of the swamp and overflowed lands and the proceeds of them — sold *is* pre-empted in aid of the Mount Vernon railroad be submitted at the election *ticket* under the provision of the charter of said Mount Vernon
671 Railroad Company, at the election on that subject on the Tuesday after the first Monday in November next; that a donation be made by the county of all the swamp land—overflowed lands—of Jefferson county not sold or pre-empted and the net proceeds of such as has been or may be sold under pre-emption rights or entered by the State to the Mount Vernon Railroad Company upon the condition that the company build and complete a railroad from Mount Vernon to Illinois Central railroad or its Chicago Branch, one or both, and have the same in operation within three years from said election and keep the same in operation;

And whereas afterwards, to wit, on the Tuesday after the first Monday in November then next ensuing, at said election there was nine hundred and ninety-six votes cast for said proposition and two hundred and thirty-six against it, as appears by the canvasser's certificate of said election, now on file in the office of the clerk of the county court of Jefferson county, Illinois;

672 And whereas in the 10th section of the aforesaid Mount Vernon railroad charter it is further provided that any county through which any other railroad may run to which this railroad may be joined, connected, or intersected *may* are hereby authorized and empowered to aid in the construction of the same or of such other railroad with which it may so connect, and for this purpose the provision of the 7th, 8th, and 9th sections of this act — extend, in-

clude, and be applicable to every such county and to every such railroad;

And whereas the Legislature of the State of Illinois, on the — day of February, A. D. 1855, passed an act entitled "An act to incorporate the Belleville and Fairfield Railroad Company," wherein is authorized the construction of a railroad from Belleville, in St. Clair county, in Illinois, to run from thence through Nashville, in Washington county, through Mount Vernon, in Jefferson county, and to Fairfield, in Wayne county, Illinois, and in said — the following persons are appointed the board of directors, viz.:

Henry Godkin, James L. D. D. Morrison, William Kenney, John Moss, Russell Hockley, Alexander D. Keneday, C. C. Coffer,
673 J. M. Lucas, John M. Johnson, Thomas M. Casey, H. T. Pace, Edward Bonham, Daniel Turney, John Keen, and John Moore, who shall hold their office until their successors are elected and qualified; and whereas all of said persons have signified their willingness to act and perform all the duties appertaining to said office of directors of said company, on the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-five, a meeting of said directors was held at Nashville, in Washington county, Illinois, when Harvey T. Pace was elected president, John N. Johnson treasurer, and Joel Watson secretary of said Belleville and Fairfield Company;

And whereas the line of the Belleville and Fairfield railroad will join to and connect and intersect with the aforesaid Mount Vernon railroad at some convenient point at or near Mount Vernon, and thereby the said Belleville and Fairfield railroad will become a part of and elongation and extension of said Mount Vernon railroad, and thereby fully and legally authorized and empowering the counties of St. Clair, Washington, and Wayne (through which
674 said Belleville and Fairfield railroad is situated) to use, exercise, and enjoy all the powers, rights, and privileges of appropriating and donating all the swamp and overflowed lands, respectively, belonging to said counties for the purpose of aiding in the construction of the said Belleville and Fairfield railroad or any other line of railroad which may pass through any of said counties and be joined to and connected or intersected with the said Mount Vernon railroad or which may be joined — or connected and intersected with the said Belleville and Fairfield railroad because of and by reason of the said Mount Vernon railroad being joined to, connect- and intersect- with the said Belleville and Fairfield railroad at or near Mount Vernon as aforesaid;

And whereas, under the authority and by virtue of the provisions contained in the said tenth section of the aforesaid act to incorporate the Mount Vernon railroad, the county court of Wayne county, in said State of Illinois, for the purpose of aiding in the construction of the said Belleville and Fairfield railroad and of the Alton,
675 Mount Carmel and New Albany railroad, held a special term of said court on the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, and then *these* passed an order that on Tuesday after the first Monday of

November, 1855, an election should be held by the legal voters of Wayne county for the purpose of voting for or against donating the unsold swamp and overflowed lands of that county — any company that would build and complete in a reasonable time a railroad through and across the limits of said county from the east to the west side thereof—that is to say, from the town of Fairfield to the west line of said county on the route of the Belleville and Fairfield railroad, and from Fairfield to the east line of said county, along the route of the Alton, Mount Carmel and New Albany railroad line as heretofore located and partly graded by the State of Illinois; and, after due notice of said election had been given by the said county court of Wayne county to the legal voters of said county, on Tuesday after the first Monday in November, 1855, an election was held throughout the said county of Wayne "for" and "against"
676 the donation of all the unsold swamp and overflowed land belonging to said county, to be given and granted as a bounty and premium to any company that will construct and finish a railroad across said county as aforesaid, when at the said election there were eight hundred and thirty-one votes (831) given in favor of and for said donation, and there were two hundred and fifty-eight votes given against said donation, as appears by the canvassers' report a-certificate of said election, now on file in the clerk's office of the county court of Wayne county as aforesaid.

And whereas the Alton, Mount Carmel and New Albany railroad charter provides and authorises said railroad shall be made from Jeffersonville, in the State of Indiana, opposite the city o- Louisville, in Kentucky, and shall run through New Albany and the southern portion of the State of Indiana to Mount Carmel, in the State of Illinois, and thence through Albion, in Edwards county, and through the aforesaid town of Fairfield, in Wayne county, Illinois;
677 and that part of said railroad from Mount Carmel to Albion has heretofore been located and graded by the State of Illinois, and from Albion to Fairfield has heretofore been located and partly graded by said State: Therefore the Alton, Mount Carmel and New Albany line of railroad passing through the whole width of Edwards county on its route from Mount Carmel to Fairfield, will thereat be joined to and there connect and intersect with the Belleville and Fairfield railroad, and by said conjunction, connection, and intersection of the Belleville and Fairfield railroad with the Alton, Mount Carmel and New Albany railroad at or near the town of Fairfield it will constitute, conclude, and continue the elongation, junction, and extension of the Mount Vernon railroad through and along the length of the Belleville and Fairfield railroad, and thence from Fairfield to and through and along the length of the Alton, Mount Carmel and New Albany railroad, thereby creating and constituting an extension of the Mount Vernon railroad all the way from the town of Mount Vernon to Jefferson-
678 ville, opposite the city of Louisville, Kentucky, and by reason of and through the aforesaid junction, connection, and intersection of the Alton, Mount Carmel and New Albany railroad with the Belleville & Fairfield railroad, and through and along the line

of the last-mentioned railroad to the town of Mount Vernon, thereby forming a complete junction, connection, and intersection with the said Mount Vernon railroad, the county of Wayne becomes duly, legally, and rightfully authorized and empowered by the provisions of the said Mount Vernon railroad charter to apply, appropriate, use, and donate all the unsold swamp and overflowed lands belonging to said county for the use and purpose of aiding in the construction of Belleville and Fairfield railroad and of the Alton, Mount Carmel and New Albany railroad across the limits of said Wayne county; and whereas, furthermore, the charter of the said Alton, Mount Carmel and New Albany Railroad Company to construct a branch of said railroad to Illinoistown, opposite the city of St. Louis, in Missouri, and long before the Legislature of Illinois had passed the "Mount Carmel" and the Belleville and Fairfield
679 railroad charter, the board of directors of the Alton, Mount Carmel and New Albany Railroad Company had passed a resolution stating and fixing the location of the line of the said branch railroad to run from Fairfield through the town of Mount Vernon, Nashville, and Belleville to Illinoistown, opposite St. Louis, and for the reason and by and through the means of the aforesaid prior location of the said branch railroad through the aforesaid towns along the very same line and routes, and previous to the passage of the charter of the Mount Vernon railroad and of the Belleville and Fairfield railroad the most intimate and perfect junction, connection, and intersection will be effected, as well as the mutual elongation, extension, union, and consolidation of the Mount Vernon railroad with the Belleville and Fairfield railroad, and also with the Alton, Mount Carmel and New Albany railroad, will be secured and thoroughly united with each other and constituting one continuous air line railroad from Jeffersonville, in Indiana, to Illinoistown, Illinois, commonly designated the Louisville and St. Louis Air Line Railroad.

680 And for all these reasons and by virtue of the aforesaid junction, connection, and intersection, extension, consolidation, and union of the Mount Vernon railroad with the Belleville and Fairfield railroad, and also with the Alton, Mount Carmel and New Albany railroad, as hereinbefore described and set forth, the aforesaid county of Wayne is thoroughly entitled and lawfully authorized and empowered by and through the provisions of the tenth section of the Mount Vernon railroad charter to donate all swamp and overflowed lands of and belonging to the said county of Wayne for the purpose of aiding in the connection of the said Belleville and Fairfield railroad and of the Alton, Mount Carmel and New Albany railroad from west to east through and across the whole width of said Wayne county.

And whereas on the first day of December, in the year of our Lord one thousand eight hundred and fifty-five, at a special term of the county court of Edwards county, Illinois, it was then and there ordered by said county court that an election should be held on the first day of January thereafter next ensuing, to wit, 1856, at
681 the several precincts and places of voting in said Edwards county, calling upon the citizens of said county to vote "for"

or "against" donating the unsold swamp and overflowed lands in this county to any company that will make and finish a railroad through and across the limits of said county of Edwards, along the line of the Alton, Mount Carmel and New Albany railroad, on the condition that the said railroad be finished in a reasonable time, and also that the title of said swamp lands shall not be surrendered by this county until the said railroad shall be first made and finished (from said donation are excepted all swamp lands upon which pre-emption claims have been taken, and also sufficient of said lands to pay the expenses of surveying, etc.), it — understood by the court that if a majority of the votes cast at said election shall be given "for a railroad," that then all the unsold swamp lands in said county (except the reservation aforesaid) shall be given to any company that will make and complete the aforesaid railroad in a reasonable time; and

Whereas public notice was fully and legally given of said
682 election and of the foregoing order and conditions thereof at each and at all of the several precincts and places of voting, and by one hundred printed copies of the foregoing conditions and order of said county court being duly posted at the most prominently public places in said county, and thereafter said election was duly held throughout said county of Edwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-six, and at said election there were three hundred and sixty-eight votes cast and given "for" the aforesaid donation of the swamp lands of Edwards county and forty-five votes were cast and given "against" said donation, as appears by the certificate and report of the canvassers of said election now on file in the clerk's office of the county court of said Edwards county, Illinois:

Therefore the county court of said county of Wayne, for the purpose of carrying into full effect the will of the people of the said county as expressed by them at their election in favor of appropriating and using the whole of the unsold swamp and overflowed lands belonging to said county (except the reservation thereof here-
683 inafter made and stated) by donating the same unto the Belleville and Fairfield Railroad Company and to the Alton, Mount Carmel and New Albany Railroad Company, and to any other company who will make and finish said line of railroad across said county, as hereinafter described and fully set forth.

Therefore, in order to satisfy the justly founded expectations of any company that may be found willing to expend their money in making said railroad across said county on the condition of their receiving the aforesaid grant and donation of said swamp and overflowed lands as their reward and recompense therefor to aid them in the making and finishing said railroad, with the reservation and on the conditions aforesaid, as set forth in the aforesaid order of the county court and published throughout said county along with the notices given for holding said election and on which said election was founded, and for which reservation and conditions said votes were given at said election for said donation of said swamp and overflowed lands of said county of Wayne:

684 Now, therefore, in consideration of the premises, the county court of Wayne county, Illinois, at a special term of said court, held in the court-house, at Fairfield, this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, pass and ordain an order of said court to make, execute, sign, seal, and deliver the following deed of trust, with the foregoing preamble hereunto annexed and made a part of said deed explaining the conditions thereof and therein contained :

Therefore this indenture, made this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, between Daniel Turney, judge of the county court of Wayne county, in the State of Illinois, and William Ellis and Samuel Hooper, associate justices of said county court, of the first part, and Charles Wood, trustee, of the second part, witnesseth :

That the party of the first part, in consideration of the premises above recited and hereunto annexed and exhibited on the foregoing twelve pages, and in pursuance of the authority vested in said
685 court by the aforesaid act of the Legislature of the State of Illinois, entitled "Act to incorporate the Mount Vernon Railroad Company," approved February the fifteenth, in the year of our Lord one thousand eight hundred and fifty-five, and also in pursuance of the authority so vested in said county court by virtue of and in accordance with a vote given by the legal voters of said Wayne county at an election held on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-five, as heretofore set forth, and for the further consideration of the sum of one dollar of good and lawful money of the United States to them in hand paid by the said Charles Wood, the party of the second part, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Charles Wood, the party of the second part, all the unsold swamp and overflowed lands, be they more or less, belonging to the said county of Wayne, lying and situate within the limits of the said county of Wayne, in the State of Illinois, and belonging to and the property of said county of Wayne aforesaid, as exhibited by the hereinbe-
686 fore-mentioned act of Congress of the United States of America, bearing date on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," wherein was granted and donated to the State of Illinois all the unsold swamp and overflowed lands within the limits of said State, and also as exhibited by the act of the Legislature of the State of Illinois passed and dated on the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands and to pay the expenses of selecting and surveying," lying, being, and situate within the limits and boundaries of each of said counties severally and respectively (hereby expressly excepting from said sale all swamp lands upon which pre-empting claims have or may hereafter be taken, and also suffi-

cient of said lands to indemnify the said county against all expenses attending the selling, surveying, and drainage or in anywise accruing to said county on account of said land):

687 To have and to hold all and singular the above granted and described premises, with the appurtenances thereunto belonging, to the said Charles Wood and to his successors until all the uses and trusts herein set forth and declared shall lawfully and completely be accomplished; and the said Charles Wood shall not in any matter or thing be reliable or responsible other than he shall be accountable for the exercise of reasonable diligence in the management of said trust.

Nevertheless, the foregoing conveyance is made for and upon the express trust and conditions following—that is to say:

First. This conveyance is made to the said Charles Wood as trustee, to hold the said lands for the purpose expressed in the recital in the fore part of this deed, to manage and secure the same in the meantime and until the Belleville and Fairfield Railroad Company, the Alton, Mount Carmel and New Albany Railroad Company, or any other company with which they may connect or unite for that purpose, shall build or cause to be built

688 a railroad across the limits of said Wayne county, Illinois, from west to east.

Secondly. The said Charles Wood, as trustee, shall have the care, oversight, and management of all said lands, and shall give diligent attention to preserve the same from all trespasses, damages, and waste, and use all legitimate and necessary means for that purpose and for the detection and punishment of and for the recovery of damages and compensation from them who may be guilty thereof.

Thirdly. The said Charles Wood, as trustee for said lands, shall keep and render at all times, when required by the county court or the Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, a full, fair, accurate account to said county board and to said railroad company of all monies received and paid by him for and concerning all waste and damages done to said premises or for or concerning his duties as said trustee.

689 Fourthly. The real estate, rights, interests, and equities herein conveyed to the said Charles Wood as such trustee are hereby expressly declared to be in trust for the use and benefit of said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, for the purpose of aid- them to construct and put in operation the railroad across the whole width of the county of Wayne aforesaid.

To the end, therefor-, and to secure and assign the said railroad companies, their successors and assigns, the full benefit of the aforesaid donation of the said several tracts of swamp and overflowed lands of and belonging to the said Wayne county, according to the true effect and meaning of the people of said county, as expressed by their votes at said election, it is therefore, in the—

Fifth place, hereby declared, by and with the assent of the people

of Wayne county aforesaid and of the county court of the said county; that upon the completion of the said railroad across
690 the county of Wayne as aforesaid, and immediately upon opening to the public for carrying freight and passengers across the whole width of said county, that the said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, shall be really and be deemed to all intents and purposes to be the sole and only beneficiaries and *custuis que* —, to wit, of all the interests, rights, equities, and lands herein and hereby conveyed and assigned, and shall have the sole right to and control of the same, and the parties herein under this deed, without hindrance or molestation of the county court or any other person or party, and said trustee is hereby authorized, directed, and required to do and act in all things thereafter as they may be directed or required in selling, conveying, or otherwise disposing of the same: Provided always, and it is expressly understood, that the said railroad shall be surveyed, located, and the work commenced in Wayne county, Illinois, on or before the
691 fourth day of July, in the year of our Lord one thousand eight hundred and fifty-seven; shall be completed and put in operation on or before the first day December, A. D. one thousand eight hundred and fifty-nine, or else this conveyance and all *all* the trusts herein expressed shall cease and become null and void, and in that case the said trustee shall reconvey the same to the county of Wayne or such other or others as he may be directed by said court.

Sixthly. It is further stipulated, agreed, understood, and declared between the county court of said county of Wayne and the Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, who are hereby recognized and declared to be the real parties in interest in this deed, that in case of the death, removal by the parties hereto, or by the resignation of the said Charles Wood as such trustee, his inability to act in or to carry into effect the trust herein declared and the true intent and meaning of the parties in interest, that said parties reserve the right to and agree they will unite in nominating and appointing another to act as trustee
692 in the place of the said Charles Wood, who shall thereupon be invested with all the legal and equitable powers and be chargeable with all the liabilities and duties as if named in the deed, to all intents and purposes whatsoever, and so from time to time as there may be any vacancy in said trusteeship.

Said appointment shall be signed by the clerk of the county court and the secretary, or other proper officer of said company, or their assigns, and be sealed with the proper seal of each party thereto.

Seventhly. The said county court of Wayne county aforesaid, and the Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors or assigns, hereby reserve the right and power to remove said trustee and appoint another, as above provided, at any time they may deem it for their mutual interest so to do.

And it is expressly understood and agreed by and between the parties to this deed of trust that in the event that said railroad shall not be commenced and completed in manner and form as set
693 forth in the above fifth clause of this deed and the lands herein conveyed revert to the said county of Wayne, then and in that case there shall not be any cost, charge, or incumbrance whatsoever on said swamp and overflowed lands hereby conveyed by virtue of any service that may be done, had, or performed under this said deed of trust.

Eighthly. The said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company or their assigns shall build or cause to be built a depot or station-house on said railroad within the present limits of the town of Fairfield, in said Wayne county; also one station east and two stations west of said town and within the limits of said Wayne county.

In testimony whereof the said county court of Wayne county aforesaid, parties of the first part hereto, have hereunto set their hands and private seals the day and year aforesaid.

N. B.—The words "the Alton, Mt. Carmel and New Albany
694 railroad," on the 6th, 9th, and 10th pages, and the words "and to the Alton, Mount Carmel and New Albany Railroad Company," on page 12th, 16, 17, & 18, and on page 18 the words "in Wayne county, Illinois," and on pages 19 and 20 the words "and the Alton, Mount Carmel and New Albany Railroad Company," interlined before signing, and erasures made on page 14 before signing.

D. TURNEY, *County Judge.* [SEAL.]
WILLIAM ELLIS, *Associate.* [SEAL.]
SAMUEL HOOPER, *Associate.* [SEAL.]

Attest: JOHN TROUSDALE,
[SEAL.] *Clerk County Court, Wayne County, Illinois.*

Filed 20th June, 1856.

J. G. BARKLEY,
Cl'k Cir. Court.

STATE OF ILLINOIS, } *ss:*
Wayne County, }

I, John L. Handley, clerk of the circuit court in and for said county and State, do hereby certify the above and foregoing deed of trust from the county court of Wayne county to Charles Wood,
695 trustee, a true and perfect copy as appears of record in my office.

Given under my hand and official seal, at my office, in
[SEAL.] Fairfield, this 20th day of December, A. D. 1869.

JOHN L. HANDLEY, *Clerk.*

DEF'TS' EX. "O."

Deed of Charles Wood, Trustee, to Wayne County.

Charles Wood, trustee, to Wayne county.

Know all men by these presents that I, Charles Wood, trustee, to whom the swamp and overflowed land of Wayne county, Illinois, have been coveyed in trust for the use of the Belleville and Fairfield Railroad Company, the Alton, Mount Carmel and New Albany Railroad Company, or any other railroad company with which they might connect for that purpose that should build or cause to be built a railroad across the county of Wayne *county* from west to east, said lands now conveyed to me in trust for said companies by Daniel Turney, county judge, and William Ellis and Samuel Hooper, Esqs., associate justices of said county of Wayne, on the 13th
696 day of March, A. D. 1856, by a deed of trust which will be found recorded in Record Book —, pages 104 & 418, inclusive, conveying said lands as aforesaid on certain conditions expressed and set forth in said deed, and describing said lands as follows, to wit: All the unsold swamp and overflowed lands, be they more or less, belonging to said county of Wayne and lying and being and situate within the limits of the said county of Wayne, in the State of Illinois, and belonging to and the property of the said county of Wayne aforesaid, as exhibited by the hereinbefore-mentioned act of Congress of the United States of America, bearing date the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and fifty:

Now, I, Charles Wood, trustee as aforesaid, in consideration that said railroad companies have failed to comply with the condition of said deed as set forth therein, and in pursuance of the requirements to recover said lands contained in the fifth clause of said deed of trust, and in obedience to an order of the county court passed on the 20th day of August, 1857, in which I am ordered to reconvey said lands to the county of Wayne, I do hereby reconvey,
697 remise, release, and forever quitclaim unto Dan'l Turney, judge, and William Elles and *and* Sam'l Hooper, Esq-., associate justices of the county court of said county of Wayne, for the use of the people of said county, all my right, title, interest, and claim in and to said lands:

To have and to hold the same, with all the privileges and appurtenances thereunto belonging, to the said Dan'l Turney, Wm. Elles, and Sam'l Hooper, and their successors in office, for the use of the people of Wayne county, as aforesaid, forever, so that neither I, the said Charles Wood, or my heirs or any other persons claiming from or under me or them, or in the name, right, or stead of me or them, shall, by any way or means, have, claim, or demand any right, title, or interest in and to the aforesaid swamp or overflowed lands or their appurtenances, or to any part or parcel thereof, forever.

In witness whereof I, the said Charles Wood, trustee as aforesaid, have hereunto set my hand and seal this 22nd day of August, A. D. 1857.

CHAS. WOOD, *Trustee.* [SEAL.]

698 STATE OF ILLINOIS, }
Wayne County. }

Be it remembered that on this 22nd day of August, A. D. 1857, personally appeared before me, the undersigned, clerk of the county court in and for said county, Charles Wood, trustee, &c., to me known to be the real person whose genuine signature appears to the foregoing conveyance, and acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and
[—.] official seal of said court, at Fairfield, the day and year above written.

JNO. TROUSDALE,
County Clerk.

Filed August 26, 1857.

R. B. SLOCUMB, *Cl'k.*

STATE OF ILLINOIS, }
Wayne County. }

I, John L. Handley, clerk of the circuit court in and for said county and State, do hereby certify the above and foregoing
699 to be a true and perfect copy of a deed given by Charles Wood, trustee, to Wayne county, as appears of record in my office.

[SEAL.] Given under my hand and official seal this 15th day of December, A. D. 1869.

JNO. L. HANDLEY, *Cl'k.*

700 DEF'TS' EX. "P."

Contract to Deposit Bonds with Ira Hersey.

Whereas the county court of the county of Wayne, in the State of Illinois, by virtue of the laws of the State of Illinois and of the proceedings thereunder had and taken, hath executed in due form, acknowledged, and duly delivered its certain deed of trust and indenture of mortgage to Isaac Seymour, Esq., of the city of New York, trustee, each bearing date the twentieth day of April, 1859, whereby the said county court did grant and convey to the said Isaac Seymour, such trustee, one hundred thousand acres of land or thereabouts lying and being in the said county of Wayne and particularly described in said deed of trust and mortgage;

And whereas the object and purpose of the said deed of trust and mortgage were to aid in the construction and maintenance of the railroad of the Mount Vernon Railroad Company and to secure the payment of the construction bonds issued by the said company, the railroad of which said company is designed to be constructed
701 from Ashley, in the county of Washington, in said State, through the county of Jefferson and Wayne, in said State, to the eastern boundary of said county of Wayne;

And whereas the said Mount Vernon Railroad Company has issued its four hundred construction bonds of five hundred dollars each

and its six hundred construction bonds of one thousand dollars each for the purpose aforesaid, and it is designed and intended that one-half of said bonds shall be appropriated and set apart for the sole and exclusive purpose of aiding in the construction of and maintenance of so much of the railroad of the said The Mount Vernon Railroad Company as is or shall be located or situated in the county of Wayne:

Now, therefore, this agreement, made this twenty-seventh day of April, one thousand eight hundred and fifty-nine, between the Hon. S. J. R. Wilson and Thomas M. Scott, judges of the county court of the county of Wayne, State of Illinois, parties of the first part; the Mount Vernon Railroad Company, party of the second
702 part, and Ira Hersey, party of the third part, witnesseth:

That the parties of the second part, for and in consideration of the premises and of one dollar to them in hand paid by the said parties of the first and second part-hereto, the receipt whereof is acknowledged, have issued and delivered to the party of the third part, in trust, two hundred of the said construction bonds or obligations of five hundred dollars each, and three hundred of the said bonds or obligations of one thousand dollars each, to be held by him, subject to the terms, stipulations, and conditions of the said deed of trust and of said mortgage, for the sole and exclusive purpose of appropriating and expending the same or the avails thereof to the construction and maintenance of so much of the railroad of the said The Mount Vernon Railroad Company as shall be located or situated within the said county of Wayne, and not otherwise.

And the said parties of the first part do hereby respectively assent and concur in and to the said transfer and delivery
703 of the said construction bonds, as herein provided, for the purposes aforesaid, and they covenant that such application and appropriation of the same shall be, to the amount and extent thereof, in all respects an effectual fulfillment of the several purposes and trusts for and upon which the said lands and premises were conveyed and mortgaged.

And the said party of the third part doth hereby covenant and agree that he will receive, hold, and appropriate said two hundred of the said construction bonds of five hundred dollars each and said three hundred of said construction bonds of one thousand dollars each for and upon the sole and exclusive trust and purpose that the same or the avails thereof shall be only expended, sold, assigned, transferred, or delivered for the construction, maintenance, and benefit of so much of the railroad of the said The Mount Vernon Railroad Company as is now or shall be hereafter situated or located in the county of Wayne aforesaid and in no other place and for no other or different object or purpose.

704 In witness whereof said parties have hereunto respectively set their hands and seals on the day and year above written, the said The Mount Vernon Railroad Company having hereto affixed

its corporate seal and caused the same to be attested by its president and treasurer.

S. J. R. WILSON, *Co. Judge*, [——.]
THOS. M. SCOTT, *Associate*, [——.]
By S. J. R. WILSON, *Att'y.*
Z. CASEY, *Pres. Mt. V. R. R.*
[L. S.] N. A. SMITH, *Treasurer Mt. V. R. R.*
IRA HERSEY. [S.]

And afterwards, to wit, on Monday, the 25th day of January, in the year of our Lord one thousand eight hundred and eighty-six, at the January term of said court, the following further proceedings (being the final decree) were had in said court in said cause and entered of record, to wit:

705 *Final Decree.*

JAMES C. CLOYD
vs.
SAMUEL MUNDY, WILLIAM SANDLIN, HENRY T. GARRISON, Samuel Garrison, Joseph White, William White, and Martha J. Wheeler, Heirs of Richard White, Deceased; James B. Manahan, William F. Bain, William Shaeffer, E. T. Hall, Elizabeth E. Slover, F. M. Burgess, Adam Osterman, William J. Osterman, and Samuel Sparks. } In Chancery.

This cause now coming on to be heard, and it appearing to the court that the following causes were consolidated with said cause—that is to say, the case of—

CHAUNCEY T. AUSTIN
vs.
MICHAEL BOOK, WILLIAM MORRIS, and DANIEL L. McCAULEY. } In Chancery.

And the case of—

JOHN B. CORNELL
vs.
THOMAS J. PETTYJOHN, JACOB C. WILLIAMS, RICHARD Wilson, James W. Hilliard, Edward Baird, Samuel Sparks, James F. Cline, James McCleary,
706 George Warren, Susan Pharr, William H. Dobbs, Andrew Martin, Ansel K. Atteberry, Asa F. Atteberry, Howland Tompkins, John Keen, Jr., George C. Garrod, N. N. Borah, and Preston R. King. } In Chancery.

And the case of—

ELIZABETH H. TAYLOR, HENRY M. ALEXANDER, Surviving Executor of Peter McMartin, Deceased; William L. Rolston, Joseph Waxelbaum, Charles A. Coe, J. Sargent Smith, and Arthur F. Gould

vs.

CALEB PEDDICORD, MICAJAH DALTON, JOHN BAIN, Elizabeth Smoke, A. Winters, Hiram Tucker, T. F. Bain, J. W. Atkinson, William Garrison, L. J. Rider, Stephen J. Renfro, Welcome Campton, Andrew Bleakley, Sarah St. Leger, William St. Leger, Harrison St. Leger, John E. St. Leger, and Emma St. Leger, Heirs-at-Law of Thomas St. Leger, Deceased; Michael Book, J. W. Hilliard, William Shaeffer, D. L. McCauley, Lavinia Sumpter, and J. Skelton. } In Chancery.

By an order of court entered of record on January 2nd, 1884; and it further appearing to the court that on June 21st, 1884,
707 a further order of court was made herein and entered of record authorizing all parties having interests in harmony with complainants to intervene and have their rights adjudged in this proceeding, and that under and by virtue of said last-recited order an intervening petition was filed herein by one Fernando B. Hane *vs.* John W. Atteberry *et als.*, and that an intervening petition was likewise filed herein by Lucinda A. Walker *vs.* John W. Atteberry *et als.;* and it further appearing from the files and records of this case that the following-named parties defendants were either served with legal process herein or entered their appearance by attorney legally and of record, viz., William White, Joseph White, and Martha J. Wheeler, heirs-at-law of Richard White, deceased; J. B. Manahan, F. M. Burgess, William Shaeffer, Samuel Mundy, Samuel Sparks, E. T. Hall, Thomas F. Bain, H. T. Garrison, Samuel Garrison, Elizabeth E. Slover, William Sandlin, W. J. Osterman, Michael Book, D. L. McCauley, William Morris, J. W. Hilliard, N. N. Borah, Asa F. Atteberry, Thomas J. Pettijohn, J. C. Williams, Richard Wilson, John Keen, Jr., Susan Pharr, Samuel Sparks, P. R. King, H. Tompkins, A. K.
708 Atteberry, J. F. Cline, E. Beard, Andrew Martin, George C. Garrod, George Warren, James McCleary, William H. Dobbs, Hiram Tucker, Elizabeth Smoke, A. Winters, John Bain, Micajah Dalton, Caleb Peddicord, Sarah J. St. Leger, William St. Leger, Harrison St. Leger, John E. St. Leger, Emma St. Leger, the last five being heirs-at-law of Thomas St. Leger, deceased; L. J. Rider, Lavina Sumpter, Welcome Compten, Stephen J. Renfro, Thomas J. Bain, J. W. Atkinson, William Garrison, Andrew Bleakley, J. Skelton, J. B. Bozarth, R. H. Puckett, John Waggoner, John Haffle, John R. Bain, William Robertson, R. D. Adams, George F. Pickett, Thomas Behymer, Van R. Price, A. Wall, R. H. Campbell, S. A. Skinner, Wilkinson Brock, John Johnson, George W. Draper, James Martin, Sarah Bane, J. Renfro, George Warren, William N.

Borah, J. B. Borah, G. J. George, William A. Atteberry, Martin M. Wheeler, Malinda Sanders, Henry Kincart, William Mabary, Joseph Huntzinger, William H. Grant, John C. Bestow, Edward Bonham, Charles A. Beecher, George Johnson, Conrad Karn, Ætna Life Insurance Company, B. Stevens, John R. Murphy, Lewis J. Ryder, Alexis Ryder, W. M. McReynolds, James A. Boyd, Eliza J. Ridgeway, Allan Cope, Valentine C. Borah, Maria Harlan,
709 Joseph Parmer, William White, William Smith, S. M. Hill, Frank W. Tracey, Thomas J. Clark, John R. Odell, James M. Kelley, John Stanley, James Stroud, J. J. Funkhouser, William Carson, Oliver P. Murphy, William Rhodes, J. C. Weaver, Robert T. Foster, William M. Branson, John W. Anderson, A. A. Bruce, John Harper, Marshal M. Poole, George W. Odell, Milton Cravens; and it further appearing to the court that the following-named parties defendants appeared in this cause by their respective solicitors and disclaimed all interest in the subject-matters of this suit, viz., G. J. George, William A. Atteberry, and J. B. Borah, and that the following-named, being others of the parties defendants herein, appeared in court in this suit by their respective solicitors and filed pleas respectively herein, to wit, Joseph Huntzinger, M. M. Wheeler, William Maberry, Henry Kincart, Malinda Sanders, Hiram Tucker, and that the rest and residue of said parties defendants appeared in court in this suit and filed answers herein respectively, and replications being duly filed by all of said complainants to all of said answers and pleas, and the said causes as consolidated coming on to be heard on the respective bills, disclaimers, pleas, answers,
710 replications and documentary proofs, depositions and oral proofs, exhibits and schedules, and counsel having been heard before the court on all sides and for all parties—that is to say, Walter B. Scates, Edwin Beecher, and Henry C. Whitney appearing as solicitors for the respective complainants and Carroll C. Boggs, Robert P. Hanna, H. Tompkins, G. J. George, James McCartney, and Orendorff & Creighton appearing as solicitors for the several defendants—and the court doth find the following facts—that is to say—

First. That on the twentieth day of April, A. D. 1859, the county of Wayne, being the owner of about 87,000 acres of swamp and overflowed lands situate in said county and having full power and authority so to do and for a full, adequate, and valuable consideration, did by its county court (the same being the proper and legal authority for that purpose) execute, acknowledge, and deliver to one Isaac Seymour, as trustee, a mortgage and a trust deed upon said lands to secure payment of sundry construction bonds of the Mount Vernon Railroad Company for the aggregate amount of $800,000, with interest coupons due semi-annually, said bonds being
711 due in fifteen years from date of their issue.

Second. That it was in said trust deed and mortgage expressly provided that if default should be made in the payment of the interest coupons attached to said construction bonds and constituting part thereof equal in amount to one year's interest, that then and in that case the whole principal of the said construction

bonds might, at the option of the then existing owners of the said construction bonds, be deemed to have become due and payable, and that default was in fact made in the payment of said interest coupons equal in amount to one year's interest, and that in fact none thereof were ever at any time paid, and that the holders of said construction bonds on March 7th, 1865, elected to treat said construction bonds as due upon such default as aforesaid.

Third. That between the said twentieth day of April, A. D. 1859, and the eleventh day of March, A. D. 1865, said Wayne county sold its equity of redemption or residuary interest of, in, and to
712 sundry tracts of the same lands which had previously theretofore been thus conveyed by mortgage and trust deed to said Isaac Seymour to sundry persons hereinafter specified.

Fourth. That on the seventh day of March, A. D. 1865, a bill in chancery was filed in this court by sundry of the holders of the said construction bonds of the Mount Vernon Railroad Company, who sued as well for themselves as for all other bondholders to foreclose the said mortgage and trust deed and for other purposes, and that Wayne county and the Mount Vernon Railroad Company were the only defendants to this proceeding; that Wayne county was duly served with process on March 11th, 1865, and was again served with process on May 23, 1865; and that Wayne county appeared in court on December 7th, 1870, to which time said cause had been from time to time regularly continued, and new parties made from time to time, filed its answer in said cause, and after a trial had in this court and an appeal from the decision thereupon to the Supreme Court United States, and on June 25th,
713 1874, a decree of foreclosure was duly entered in this court against said county, and all of said lands or such parts thereof as might be necessary to satisfy said decree were ordered to be sold at a decretal sale by the master in chancery of this court, which decree was appealed from to the Supreme Court of the United States and the- affirmed, and the same were so sold by said master in chancery on the eighteenth day of September, A. D. 1877, and that the same were sold in separate parcels according to legal subdivisions, and that all of said tracts were purchased at said decretal sale by Stephen A. Goodwin, Isaac Taylor, Samuel J. Crooks, Norman M. Broadwell, and Richard P. Glenn in separate tracts and in detail according to the requirements of the said decree, and that under the terms of said sale as ordered by said decree a redemption, as provided by the statute of Illinois for judicial sales, was allowed to the county of Wayne, and that none of the said tracts were redeemed from said sale, and that at the expiration of said term of redemption the master in chancery of this court executed a deed for all of said tracts of land to Norman M. Broadwell, who
714 was the assignee of the said certificates of purchase of said lands at said decretal sale.

Fifth. That none of the parties so purchasing the equity of redemption or residuary interest of said county of Wayne between the said twentieth day of April, A. D. 1859, and the eleventh day of

March, A. D. 1865, were made parties to such suit to foreclose, nor did they appear in any way to such suit.

Sixth. That upon the hearing of said bill there was found to be due of principal and interest upon said construction bonds the aggregate sum of $1,118,734.71, and the bonds embraced in said mortgage and trust deed were ordered to be sold, or so much as might be necessary to produce that amount, and that at such master's sale the total amount realized was $620,160.40, leaving due and unpaid and unprovided for by said sale the sum or deficit of $498,574.31.

Seventh. That there is here exhibited and shown and expressly made a part of this decree a list and schedule of lands involved in said consolidated suit and specified in said bills of complaint, together with the names, respectively, of the several and re-
715 spective persons to whom the county of Wayne sold its equity of redemption or residuary interest; and there is likewise in and forming part of said list and schedule a statement of the present owners, respectively, of the title acquired by said Stephen A. Goodwin, Isaac Taylor, Samuel J. Crooks, Norman M. Broadwell, and Richard P. Glenn, and deraigned by mesne conveyances from the assignees of said parties and from said decretal sale; and there is likewise in and forming part of said list and schedule a statement of the amounts, respectively, which were bid at said decretal sale for said tracts of land respectively, viz:

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Subd.	Sec.	T.	R.	Purchasers of eq. of redemption.	Present owners of eq. of redemp.	Owners of title acquired at decretal sale.	Am't bid at decretal sale.
N w n w	11	2 s	R 6	Thos. L. Cooper	Heirs of Rich. White.	J. C. Cloyd	$240
S w n w	11	"	"	Jas. B. Manahan	J. B. Manahan	J. C. Cloyd	240
E ½ s w s e	11	1 n	5 e	J. J. R. Turney	F. M. Burgess	J. C. Cloyd	150
N e n e	10	3 s	7 e	E. T. Hall	William Schaeffer	J. C. Cloyd	160
N w s w	29	2 n	9 e	D. M. Armstrong	Samuel Munday	J. C. Cloyd	240
S e n w	29	2 n	9 e	Samuel Sparks	Samuel Sparks	J. C. Cloyd	240
N w n e	10	3 s	R 7	E. T. Hall	E. T. Hall	J. C. Cloyd	160
S w n e	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
N e n w	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
S e n w	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
N e s w	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
N w s w	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
S w s w	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
S e s w	10	"	"	E. T. Hall	E. T. Hall	J. C. Cloyd	160
S w s w	11	2 s	R 6	Jas. Bain	Thos. F. Bain	J. C. Cloyd	240
N w n w	9	1 s	R 5	Isaac Garrison,	H. T. Garrison	J. C. Cloyd	280
S w n w	9	1 s	R 5	Isaac Garrison	Sam'l Garrison	J. C. Cloyd	280
W ½ s w s e	11	1 n	R 5	J. J. R. Turney	Elizabeth E. Slover.	J. C. Cloyd	150
S w s e	29	2 n	9 e	D. W. Kennedy	Wm. Sandlin	J. C. Cloyd	240
N w s e	2	1 n	R 9	Anton Osterman	Adam Osterman, Wm. J. Osterman.	Jas. C. Cloyd	400
S e s e	11	2 s	R 6	Michael Book	Michael Book	C. T. Austin	240
S w	10	3 s	R 9	D. L. McCawley	D. L. McCawley	C. T. Austin	480
N w n w	2	2 s	R 9	Robert Thread	William Morris	C. T. Austin	300
S e s w	20	2 n	9 e	W. C. Lattimore	J. W. Hilliard	J. B. Cornell	240
N e s e	22	2 s	6 e	N. N. Borah	N. N. Borah	J. B. Cornell	240
S w s w	25	1 s	5 e	Asa F. Atteberry	Asa F. Atteberry	J. B. Cornell	340
717 N w s e	22	2 n	7 e	T. J. Pettyjohn	Thos. J. Pettyjohn	J. B. Cornell	220
N w s e	19	2 n	9 e	T. J. Pettyjohn	J. C. Williams	J. B. Cornell	220
S w s e	19	2 n	9 e	Richard Wilson	Richard Wilson	J. B. Cornell	240
N w s e	26	1 s	5 e	M. W. Rogers	Jno. Keen, Jr.	J. B. Cornell	240
N e n w	10	1 n	9 e	Susannah Pharr	Susan Pharr	J. B. Cornell	240
W ½ s e n w	29	2 n	9 e	Sam'l Sparks	Sam'l Sparks	J. B. Cornell	120
N e s e	26	1 s	5 e	F. M. Atteberry	H. Tompkins	J. B. Cornell	240
N w s w	25	1 s	5 e	A. K. Atteberry	A. K. Atteberry	J. B. Cornell	340

Subd.	Sec.	T.	R.	Purchasers of eq. of redemption.	Present owners of eq. of redemp.	Owners of title acquired at decretal sale.	Am't bid at decretal sale.
N e ne	30	2 n...	9 e...	D. M. Lattimore....	J. F. Kline	J. B. Cornell.....	240
					E. Beard.....	J. B. Cornell.	
N e se	4	1 s...	5 e...	Andrew Martin.. ..	Andrew Martin.....	J. B. Cornell.....	240
N w s w	31	1 s...	5 e...	Wesley Gregory....	George C. Garrod....	J. B. Cornell.....	240
S e s e..	26	1 n...	5 e...	Silas D. Jones.....	George Warren.....	J. B. Cornell.....	240
S e n e	30	2 n...	9 e...	Jas. McCleary	James McCleary	J. B. Cornell.....	240
S e s w	23	1 n...	9 e...	Wm. H. Dobbs.....	Wm. H. Dobbs.....	J. B. Cornell.....	400
S e s e	22	2 s...	6 e...	N. N. Borah.....	N. N. Borah	J. B. Cornell.....	240
N w s w	23	" ...	" ...	N. N. Borah.....	N. N. Borah	J. B. Cornell.....	240
N w n w	29	2 n...	9 e...	Richard Wilson....	Richard Wilson.....	J. B. Cornell.....	240
S w s w.....	31	1 s...	5 e...	Wm. R. Wiggins....	George C. Garrod....	J. B. Cornell.....	240
S w s w.....	23	2 s...	6 e...	N. N. Borah.....	N. N. Borah.....	J. B. Cornell.....	240
S e s e.....	19	2 n...	9 e...	J. C. Williams.....	J. C. Williams.....	J. B. Cornell.....	240
N ½ s e s e ...	26	1 s...	5 e...	F. M. Atteberry....	H. Tompkins.....	J. B. Cornell.....	120
S w s w.....	1	3 s...	9 e...	D. L. McCawley....	D. L. McCawley.....	J. B. Cornell.....	240
N e n w.....	10	2 s...	9 e...	R. C. Fowler.....	Preston R. King.....	J. B. Cornell.....	240
N w n w	2	3 s...	9 e...	D. L. McCawley....	Jas. Hutchinson.....	J. B. Cornell.....	240
S w n w.....	2	3 s...	9 e...	D. L. McCawley....	Jas. Hutchinson.....	J. B. Cornell.....	240
S e s w.....	19	2 s...	6 e...	E. A. Barnett.....	Wm. A. Dobbs, Ætna Fire Ins. Co.	H. M. Alexander...	234 72
718 N ½ s e..	12	3 s...	7 e...	Hiram Tucker.....	Hiram Tucker.....	Lucinda A. Walker	480
N e n e..	14	2 s...	6 e...	Michael Book.....	Michael Book	H. M. Alexander...	240
S e n e.....	14	2 s...	6 e...	Wm. F. Book.....	Eliz. Smoke.....	H. M. Alexander...	240
N e se.....	9	3 s...	7 e...	E. T. Hall.....	A. Winters.....	Lucinda A. Walker	320
N e se.....	10	2 s..	6 e...	J. R. Bain.....	Jno. Bain.....	Lucinda A. Walker	440
S w se.....	7	3 s...	9 e...	John Johnson.....	Jno. S. Johnson	Charles A. Coe.....	240
S e ne.....	35	1 s...	5 e...	A. K. Atteberry....	Micajah Dalton.....	Elizabeth H. Taylor.	360
N e se.....	22	1 s...	5 e...	S. J. Branson.....	Caleb Peddicord.....	Elizabeth H. Taylor.	320
E ½ s e	3	3 s...	7 e...	E. T. Hall.....	Wm. Shaeffer.....	Lucinda A. Walker	560
N ½	12	3, 5...	9 e }	D. L. McCawley....	D. L. McCawley.... {	Lucinda A. Walker	1,280
N ½ s w.....	12	3, 5...	9 e }			Lucinda A. Walker	320
N e se.....	31	1 s...	9 e...	Thos. St. Leger	Heirs of Thos. St. Leger.	Lucinda A. Walker	240
W ½ s e.....	3	3 s...	7 e...	E. T. Hall	E. T. Hall.....	Elizabeth H. Taylor.	560
N ½ n e.....	36	2 s...	6 e...	L. J. Rider.....	L. J. Rider.....	Elizabeth H. Taylor.	480
W ½ n w.....	5	1 s...	8 e...	L. Sumpter.....	Lavina Sumpter	Charles A. Coe.....	320
S w s w.....	14	1 n..	9 e...	Charles Wood.....	Welcome Compton ..	J. Sargent Smith...	260
S w se.....	12	3 s...	7 e...	Nathan Renfro....	Stephen J. Renfro...	Elizabeth H. Taylor.	240
W ½ s e.....	7	3 s...	8 e...	H. C. Shelton.....	Jas. K. Parmer.....	Lucinda A. Walker	520
N e ne.....	13	2 s...	6 e...	J. W. Atkinson.....	J. W. Atkinson.....	Elizabeth H. Taylor.	240
N w s e.....	19	2 s...	6 e...	M. M. Patterson...	William Garrison.....	Lucinda A. Walker	360
S w s w	26	1 n...	9 e...	G. W. Ramsey.....	Andrew Bleakley.....	Arthur F. Gould....	240
N w n w.....	22	1 s...	5 e...	J. B. Bozarth.....	J. Skelton, J. B. Bozarth.	Elizabeth H. Taylor.	240
N w se.....	2	3 s...	7 e...	Feldon Herold.....	Stephen J. Renfro...	Lucinda A. Walker	480
S w s e.....	25	2 n...	7 e...	John W. Kindle....	John W. Kindle.....	Fernando B. Hane.	400
N w ne.....	36	.....	.....	W. J. Mayo..... {	Edward Barnham } Chas. A. Beecher.. } John C. Bestow..... }	Fernando B. Hane. Fernando B. Hane	400 500
S e se....	5	1 n...	8 e...	J. Atteberry	George Johnson.....	Fernando B. Hane.	
719 N w n w.	7	.....	.....	Conrad Karn.....	Conrad Karn.....	Fernando B. Hane.	520
S w se....	11	2 s...	5 e...	Rich. Sanders.....	Malinda Sanders.....	" " "	320
N e n w.....	25	.....	.....	J. Stroud.....	Ætna Life Ins. Co...	" " "	640
S w s e.....	15	2 s...	6 e...	Peter Hawkins.....	Benj. Stevens.....	" " "	320
S e s w.....	15	.....	.....	Peter Hawkins.....	Benj. Stevens.....	" " "	560
W ½ n e.....	2	3 s...	7 e...	J. V. Tennyson.....	John R. Murphy.....	" " "	422
N w s e.....	4	.....	.....	L. Ryder.....	Lewis J. and Alexis Ryder.	" " "	160
S w s e.....	4	.....	.....	Lewis J. Ryder....	Lewis J. Ryder.....	" " "	160
S w n w.....	12	.....	.....	Hiram Tucker.....	Hiram Tucker.....	" " "	240
S e s w.....	1	1 s...	8 e...	D. T. Fitzgerald...	James A. Boyd, W. M. McFunnels.	" " "	320
N w s w.....	5	.....	.....	Lavina Sumpter...	Lavina Sumpter	" " "	240
S w s w.....	5	.....	.....	J. J. R. Turney.....	R. D. Adams.....	" " "	240
½ n e n w..	8	.....	.....	J. D. Cope.....	Allan Cope	" " "	200
½ n e n w..	8	.....	.....	J. D. Cope.....	Wm. Robertson.....	" " "	200
w s w.....	13	.....	.....	Geo. L. Borah.....	V. C. Borah.....	" " "	560
e s w.....	24	.....	.....	Wm. N. Borah	Wm. N. Borah.....	" " "	600
n w.....	6	3 s...	8 e...	Harlan & Kinshalo	Maria Harlan, R. H. Puckett.	" " "	.621
s w	6	.....	.....	J. Odell, Jr.....	Geo. F. Pykert.....	" " "	1,600
n w.....	6	.....	.....	" " "	Erasmus W. Pendleton.	" " "	670

Subd.	Sec.	T.	R.	Purchasers of eq. of redemption.	Present owners of eq. of redemp.	Owners of title acquired at decretal sale.	Am't bid at decretal sale.
N e s w	7	.....	.....	T. Parmer	Jas. K. Parmer	Fernando B. Hane.	989
W ½ n w	7	.....	.....	F. Herald	Hiram Tucker	" " "	2,800
N e n w	17	.....	.....	Wm. A. Atteberry	Wm. A. Atteberry	" " "	480
N w n w	17	.....	.....	J. Rhodes	Thos. Behymer	" " "	420
S w n w	17	.....	.....	Wm. White	Henry Kincart, Wm. White.	" " "	420
720 S w s w	17	.....	.....	Wm. Smith	Wm. Smith	Fernando B. Hane.	240
W ½ s e	6	1 s...	9 e...	Van R. Price	Van. R Price	" " "	1,360
S w n e	21	.....	.....	J. L. Newson	Anderson Wall, Richard Campbell.	" " "	320
E ½ n w	21	.....	.....	Vincent Shelton	Sterling M. Hill	" " "	640
S w n w	28	.....	.....	Jas. Crews	" " "	" " "	140
N e n e	1	2 s...	9 e...	Sam'l A. skinner	L. A. Skinner	" " "	406
S e s w	30	.....	.....	John L. Waggoner	J. L. Waggoner	" " "	505
N e s w	8	3 s...	9 e...	C. Berkley	John Haffele	" " "	400
S w s w	8	.....	.....	Jas. Chrisman	Thos. Clark	" " "	320
N w	15	.....	.....	Landon C. Kelly	John Odell	" " "	960
W ½ n e	18	.....	.....	John Johnson	John Johnson	" " "	840
E ½ s e	1	1 n...	7 e...	Geo. Johnson	Geo. Johnson	" " "	600
S w s e	1	.....	.....	G. W. Evans	Wm. Carson, G. J. George.	" " "	240
S w n e	35	.....	.....	Q. Q. Wakefield	O. P. Murphy	" " "	320
S w s e	23	2 n...	9 e...	Wm. F. Bailey	Ætna Life Ins. Co	" " "	480
S w n w	25	.....	.....	J. Gill	G. J. George, R. D. Adams.	" " "	480
S e s w	21	2 n...	9 e...	W. Fullard	Wm. Rhodes	" " "	320
S e n e	23	.....	.....	Thos. Johnson	J. C. Weaver	" " "	240
N w s e	5	1 s...	5 e...	S. Given	Wm. M. Branson	" " "	320
N w n e	2	2 s...	5 e...	John W. Anderson	J. W. Anderson	" " "	400
S w s w	11	.....	.....	Richard Sanders	Malinda Sanders	" " "	140
N e n w	12	.....	.....	A. W. Bruce	A. W. Bruce	" " "	400
S w n e	27	2 s...	6 e...	J. C. Slaton	M. M. Wheeler	" " "	400
N w s e	4	3 s...	6 e...	Wm. Mabry	Wm. Mabry	" " "	240
721 S w s e	4	.....	.....	G. T. Means	Geo. W. Draper	Fernando B. Hane.	240
N e s e	3	1 s...	8 e...	C. A. Beecher	C. A. Beecher	" " "	240
N e s w	13	1 s...	9 e...	E. Free	John Harper	" " "	560
S e	29	.....	.....	F. W. Tracey	F. W. Tracey	" " "	960
E ½ n w	3	3 s...	9 e...	N. Merritt	Marshall Poole	" " "	454
S w n w	3	.....	.....	J. McField	J. Hunsinger	" " "	227
S e n e	9	.....	.....	W. H. Hood	Geo. W. Odell	" " "	240
N w n e	9	.....	.....	Wm. Stewart	Marshall Poole	" " "	240
S w n e	9	.....	.....	Milton Cravens	M. Cravens	" " "	240
N e	11	.....	.....	D. L. McCawley	D. L. McCawley	" " "	960
S ½ n e	14	.....	.....	P. L. Funkhouser	John Funkhouser	" " "	800

And it further appears to the court as matters of law binding upon the court, and it is ordered and decreed—

1. That the opinions and decisions of the Supreme Court of the United States upon the appeals heretofore prosecuted from the decrees of this court and reported in 16th Wallace's Reports, page 452, and in 94 U. S. Reports, page 498, are binding upon this court, and there is nothing in record or evidence in this case as consolidated to invalidate the said mortgage and trust deed or the respective amounts found due to the several parties to this suit as consolidated.

722 Both the findings as to the said several amounts so found due should be sustained.

2. The purchasers from Wayne county, after the recording of the mortgage, took the lands purchased by them severally subject to the lien of the mortgage, and the proceedings to foreclose the said trust deed and mortgage did not release or discharge this lien so long as the mortgage debt remains unsatisfied.

3. The purchasers from the county, both after the recording of that mortgage and after the service of process on Wayne county on Marc[illegible]n

11th, 1865, cannot acquire tax titles as against the mortgagees or those acquiring title under the foreclosure sale.

4. That the master's deed under the decretal sale of September 18th, 1877, transferred to the several purchasers thereat an equitable right to so much of the mortgage debt as was bid upon each tract severally.

5. That the *lis pendens* as to purchasers from the county attaches from the 11th of March, A. D. 1865, the date of service of process on Wayne county, and that upon the facts averred in the several bills and sustained by the proofs the purchasers of lands at
723 the decretal sale which were sold by Wayne county between April 20th, 1859, and March 11th, 1865, are entitled to file a bill in the nature of a supplemental bill against the parties holding title from the county subject to the mortgage to have the lien of the mortgage enforced by a decree of foreclosure.

And the court, being fully advised in the premises, doth order, adjudge, and decree—

That each of said owners of the said equity of redemption or residuary interest of the county of Wayne of, in, and to said several tracts of land which were purchased from the county between April 20th, 1859, and March, 11th, 1865, who have been summoned in this case or who may have entered their voluntary appearance therein or their assigns respectively, each acting for himself or herself and not for any other, may and shall redeem the respective tracts of land of which they at date of service upon them respectively of process or entry of appearance respectively held and owned the equity of redemption or residuary interest of the county of Wayne within
724 or at the expiration of one year from this date by paying into this court the amount for which each of said tracts of land was bid and sold at said decretal sale for the use and benefit of the owners respectively under title deraigned from said decretal sale of the tract or tracts so redeemed, and that the judgment creditors respectively of any such persons so owning the equity of redemption may and shall redeem any tracts thereof in default of such parties so redeeming at any time within three months of and after the expiration of said twelve months by paying the amount so decreed to be redeemed from, in accordance with the statutes of the State of Illinois concerning redemption from judicial sales; and it is further ordered, adjudged, and decreed that the decree of foreclosure of June 25th, 1874, hereinbefore referred to, shall be vacated and annulled as to each and every tract (but as to none others) thus redeemed as aforesaid, and that in default of redemption, as provided for herein as aforesaid, that then and from the date of the expiration of such period of limitation all rights of such owners of
725 the said equity of redemption or their respective assigns so failing to redeem shall be forever barred and foreclosed of heir equities of redemption, respectively, and of all rights of, in, and said lands of any kind or nature adversely to the owners under tle deraigned from said decretal sale, and that each and all of such efendants so being barred and foreclosed and their agents, attorneys, solicitors, and servants or assigns shall, from and after the ex-

piration of the said fifteen months, cease to exercise any acts of ownership over said lands, and shall at once thereafter vacate, abandon, and leave the same and not intermeddle any further therewith under pain of being considered in contempt of this court, and that the respective titles of said several and respective tracts of land not so redeemed shall be, and they are, confirmed in said several parties so owning the same by title deraigned from said decretal sale as aforesaid and their assigns, and that any tax deed or certificate to any tract of land and not thus redeemed which may belong to any such person thus entitled, but failing to redeem such tract, is
726 hereby declared to be vacated, annulled, and for nothing taken hereafter.

And it is further ordered, adjudged, and decreed that the costs of this proceeding shall be adjudged against and distributed amongst all claimants under said equity of redemption or residuary interest of the county of Wayne who have been summoned in this cause or who have entered their voluntary appearance herein in the proportion of the respective amounts so required to be paid by them, respectively, to redeem hereunder (whether they redeem or not), except that each party defendant shall be taxed costs of service on him or her, and that a reference is hereby ordered to the master in chancery to state such respective amounts, and that several executions issue therefor against said defendants respectively, and that this cause be continued for report of the master in chancery on all matters referred to him herein.

And thereupon the defendants enter a motion for a rehearing.

727 257², after decree.

And afterwards, to wit, on the day and year last aforesaid (January 25th, 1886), came the defendants, by their solicitors, and filed in said clerk's office their petition for rehearing, which is in the words and figures following, to wit:

Petition of Def'd'ts for Rehearing.

In United States Circuit Court, Southern District of Illinois. January Term, 1885.

ELIZABETH H. TAYLOR *et al.* and Consolidated Cases
vs.
J. B. BOZORTH *et al.*
} Reforeclosure of Mortgage.

Motion for rehearing.

To the Hon. Judges Treat and Blodgett, sitting:

The respondents in the above-entitled cause, by their attorneys of R. P. Hanna, H. Tompkins, and James McCartney, would respectfully enter the motion for a rehearing.

For cause therefor, without going into detail of the many errors

of entering decree against those not served or who are dead and those who filed separate pleas or disclaimed, would represent—

1st. That the result of the decree in said cause would be
728 a great hardship to the respondents, as there is not enough in amount in any case to allow an appeal.

2d. As a precedent it would fix the status of the title to the real estate of one-fifth of the entire lands of the county of Wayne to be as follows: The supreme court of Illinois, after a test case on full evidence with these complainants' grantors, defendants, and on a rehearing, fixed the legal title in the respondents, while the only three judges of the Supreme Court of the United States, and now sitting, held substantially the same in the Kennicott case when the case was originally before it; that with the construction now given by the decree rendered herein, on the decision of the majority of the Supreme Court of the United States, a direct conflict would exist and remain, without redress, between the State and Federal courts, and would establish a precedent against hundreds who are not parties to this proceeding.

2d. Error in finding.—The court is made to say "that it was in said trust deed and mortgage expressly provided that if default should be made in the payment of the interest coupons attached to said construction bonds and constituting part thereof equal in amount to one year's interest, that then and in that case the whole principal of the said construction bonds might, at the option of the then existing owners of the said construction bonds, be deemed to become due and payable."

The above finding is not so set out in the deed and mortgage.

729 True statement.

That in the mortgage of Wayne county it recites: "If default shall be made in the interest * * * so that a sum equal to one year's interest of the whole amount of the obligation * * * that then and from thenceforth it shall and may be lawful for the said parties of the second part to enter into and upon and take possession of all and singular the lands."

We submit this is a material error of the finding from the evidence.

The respondents claim an adverse holding and base it on the fact that complainants' grantors could have entered upon the lands April 20, 1860, if they ever had any right, claim, or title thereto. Hence the above error of finding becomes material.

To meet the position of adverse holding respondents allege and prove by order of county court, March term, Ex. "G," whereby the Mt. Vernon R. R. Co. prayed an extension of one year for the fulfilling the conditions of the Vanduser, Smith & Co. contract, with an agreement to its forfeiture if not so fulfilled, and by order of county court, December term, Ex. "I," of its forfeiture, and by Ex. "M," of the continuous sale of the lands to respondents, it being a direct, a positive declaration of adverse holding from 1860 relating back to

1858, the date of the contract with Vanduser, Smith & Co. This is one of the material points of respondents' assertion of title, adverse and prior to the execution of the said deed and mortgage.

730 It is expressly given as a privilege and ordered in said instruments that the holders of the obligation of the Mt. V. R. R. Co. might enter at any time on any lands equal in value to the amount of the bonds they might hold, the value of the lands having been appraised as by provision written in the instruments. These provisions have been overlooked by the court.

That the court erred in not considering the evidence of respondents as offered in the case after it is admitted that they were not parties to the foreclosure suit, which tended and did show—

1. That there was no power to have executed the said mortgage.
2. That no mortgage was executed to bind any one of the two judges of the county out of any term or call of term signing what they called a mortgage.
3. That no consideration was paid.

That a declaration of forfeiture with adverse holding was asserted and acquiesced in by the beneficiaries, as shown of record of the county court, March term, 1860, by Ex. "G," and by Ex. "I," order of the county court, December term, 1862, and by Ex. "M," showing that the lands were all sold, granting and conveying an indefeasible title in fee simple under said order, listing same for taxation before any suit was commenced to bind third parties by setting up the power and consideration on which a recovery was had.

731 We submit that the evidence is conclusive upon all of these points.

That respondents were not parties to the foreclosure suit.

That no consideration was paid.

That no power existed to make the said instruments of any force.

That adverse holding was openly and consented to from March term, 1860; that respondents' title is the legal title and held adverse and dates prior to any claim of title by complainants. All of which is respectfully submitted, praying that a rehearing may be had, that substantial justice may be done.

H. TOMPKINS,
R. P. HANNA,
Att'ys for Respondents.

(Endorsed:) Filed January 25, 1886. J. A. Jones, clerk.

[Endorsed:] No. 113. Chancery. Motion & petition for rehearing by respondents. E. W. Taylor *et al. vs.* J. B. Bozarth *et al.* Consolidates case. Filed Jan. 25, 1886. J. A. Jones, cl'k. Hanna, Tompkins & McCartney, att'ys for respondents.

732 And afterwards, to wit, on Monday, the 29th day of March in the year last aforesaid (A. D. 1886), at the January terr- of said court, the following further proceedings were had in sai of court in said cause and entered of record, to wit:

Order Denying Motion for Rehearing.

JAMES C. CLOYD
v.
SAMUEL MUNDY *et al.* } In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR *et al.*
v.
CALEB PEDDICORD *et al.* } In Chancery.

And now, on this 29th day of March, 1886, come again the parties, by their counsel, and submit to the court the defendants' petition for a rehearing in this cause, and the court, having heard and considered the same, as well as the briefs of counsel thereon,
733 and being sufficiently advised in *in* the premises, doth now order and decree, both of the judges hearing the cause and pronouncing the decree of January 25th, 1886, concerning that the prayer of the petition for a rehearing be denied.

And afterwards, to wit, on Monday, the 31st day of May, at the term of court and in the year last aforesaid, to wit, January term, A. D. 1886, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Continuing Motion for Rehearing.

JAMES C. CLOYD
v.
SAMUEL MUNDY *et al.* } In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR *et al.*
vs.
CALEB PEDDICORD *et al.* } In Chancery.

And now, on this 31st day of May, 1886, it is ordered by the court that the application for rehearing in this case stand tinued until the next June term of this court.

And afterwards, to wit, on Thursday, the 10th day of June, at the June term of said court and in the year last aforesaid, to wit, A. D. 1886, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Affirming Order of M'ch 29th, 1886.

JAMES C. CLOYD
v.
SAMUEL MUNDY *et al.* } In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR *et al.*
v.
CALEB PEDDICORD *et al.* } In Chancery.

735 And now, on this 10th day of June, 1886, come again the parties, by their counsel, and submit to the court the motion of the defendants that the order denying the application for a rehearing of the cause entered on the 29th of March, 1886, be set aside, and the court, having heard and considered said motion and being sufficiently advised in the premises, doth overrule the same, and doth further order and decree that the order of March 29th, 1886, denying the application for a rehearing of the cause, stand affirmed.

And afterwards, to wit, on the 13th day of July, in the year last aforesaid (A. D. 1886), came the defendants, by their solicitors, and filed in said clerk's office their motion to correct and strike names from the decree in said cause; which said motion is in the words and figures following, to wit:

Motion to Correct and Strike Names from Decree, &c.

Circuit Court United States, Southern District of Illinois. June Term, 1886.

736 J. C. CLOYD *et al.*
v.
CLARISSA JORDAN *et al.* and Consolidated Case. } Bill to Reforeclose a Mortgage.

Motion to strike names of parties to the decree from the same.

Now come H. Tompkins and R. P. Hanna, att'ys for the defendants in the above cause, and represents that they have prayed

appeal for the def'ts in the above-entitled cause for all parties thereto who have been served by summons or have entered their appearance, and as it appears from the decree entered that decrees are taken against the following-named persons, who have not entered their appearance nor been served with summons, they move that the same may be stricken from the decree, to wit: Wm. H. Grant, J. C. Bestow. E. Bonham, C. A. Beecher, Geo. Johnson, Conrad Korn, Ætna Ins. Co., B. Stevens, John Murphy, Alex. Rider, Wm. M. Reynolds, James Boyd, Eliza Ridgway, Maria Harlan, Joseph Palmer, Wm. Smith, F. W. Tracey, Thos. J. Clark, John R. Odell, James Kelley, John Stanley, James Stroud, Wm. Carson, Oliver P.
Murphy, Wm. Rhodes, J. C. Weaver, R. T. Forth, Wm. M.
737 Branson, J. W. Anderson, A. A. Bruce, John Harper, Marshall Pool, Geo. W. Odell, Milton Cravens.

And further they represent as the following persons disclaimed—W. H. Dobbs, Elizabeth Smoke, and J. B. Borah—that they also may be dismissed with their costs.

They further move, as the following persons have filed pleas of decrees against the complainants' grantors before they claimed to have purchased of the complainants, obtained in the State court and sustained by the supreme court of the State of Ill., cancelling the complainants' grantors title, which fact is admitted and alleged to be true by the complainants, and no replication was filed, that the same be stricken from the decree and the same be dismissed at the cost of compl'ts.

They further move, as it is admitted by complainants that suits were commenced in the State court against the following-named def'ts, and that issue was joined in an action to remove, as a cloud from the title, the complainants' grantor's title to the same lands now here in suit before the complainants claimed to have purchased,
to wit, decrees were had against Walter B. Scates, the grantor
738 to Fernando B. Hane, by R. H. Puckett, Wm. N. Borah, M. M. Wheeler, Malinda Sanders, Henry Kincart, Wm. Mabery, V. C. Borah, cancelling and forever setting at naught said Walter B. Scates' title—

That suits for the same object are pending with issue and evidence closed, which were by agreement continued awaiting and to abide the decision of the case of Scates *vs.* King, 110 Ill., page 454, as follows: A. L. Wall, R. H. Campbell, Geo. Draper, and S. M. Hill. These def'ts represent that the State court had jurisdiction of the parties and the subject-matter.

And as a matter of law these complainants are bound by the decrees so had and by the suits pending. The truth being admitted by the complainants, they hereby pray to be dismissed with their costs.

H. TOMPKINS,
R. P. HANNA,
For the Def'ts in This Matter.

743 Endorsed:) Filed July 13th, 1886. J. A. Jones, clerk.

And also, on the same day and year last aforesaid, to wit,
739 Tuesday, July 13th, A. D. 1886, at the June term of said court, the following further proceedings were had in said cause and entered of record, to wit:

Order Allowing Appeal.

JAMES C. CLOYD
v.
SAMUEL MUNDY *et al.* } In Chancery.

C. T. AUSTIN
v.
MICHAEL BOOK *et al.* } In Chancery.

JOHN B. CORNELL
v.
THOMAS J. PETTYJOHN *et al.* } In Chancery.

ELIZABETH H. TAYLOR *et al.*
v.
CALEB PEDDICORD *et al.* } In Chancery.

And now, on this 13th day of July, 1886, come again the parties, by their counsel, and the defendants pray an appeal from the final decree entered in this cause to operate as a supersedeas, which is allowed by the court on their entering into bond to
740 the complainants in the sum of five thousand dollars, conditional as the law directs, with sureties to be approved by the court within thirty days from this date.

And afterwards, to wit, on the 5th day of August, in the year last aforesaid (1886), came the defendants praying an appeal in said cause, by their solicitors, and filed in said clerk's office in said cause their petition for severance from the defendants refusing to join in the appeal; and also on the same day came the said defendants and filed their appeal bond in said cause; which said petition for severance, &c., and appeal bond are in the words and figures following, to wit:

741 *Petition for Severance, &c., on Appeal.*

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In Circuit Court United States, Southern Dist. Illinois. June Term, 1886.

J. C. CLOYD, J. B. CORNELL, T. C. AUSTIN, Elizabeth H. Taylor, Lucinda A. Walker, the Heirs of M. Alexander, Surviving Executor of Peter McMartin, Wm. Rolston, Joseph Waxelbaum, Chas. Coe, J. Sargent Smith, Arthur F. Gould, and F. B. Hane

vs.

CLARRISSA JORDAN, N. N. BORAH, A. WINTERS, J. D. White, Heir Richard White, Deceased; J. B. Monahan, T. F. Bain, Michael Book, D. L. McCawley, Henry Jones, Andrew Martin, Geo. C. Garrod, H. Tucker, Elizabeth Smoke, John Bain, Sarah A. St. Leger, Lavina Sumpter, Wm. Compton, J. W. Atkinson, R. H. Puckett, John Waggoner, Thos. Beyhamer, John Murphy, Joseph Palmer, P. R. King, Margaret Sparks, Widow and Heir of Sm. Sparks, deceased; Susan Pharr, Andrew Blakely, A. L. Wall, R. H. Campbell, M. Dalton, James McCleary, Elizabeth Slover, Wm. Robinson, Henry Garrison, Sm. Garrison, J. C. Williams,
742 Geo. Draper, Wm. Shaeffer, H. Tompkins, Wm. Garrison, Wm. T. Osterman and Abraham Osterman, Wm. H. Dobbs, J. B. Borah, Wm. A. Atteberry, John T. St. Leger, and Heirs of Thos. St. Leger, M. M. Wheeler, Malinda Sanders, Henry Kincart, Geo. F. Smith, E. T. Hall, L. J. Rider, John Johnson, John Hafflele, Wm. N. Borah.

Reforeclosure of Mortgage.

To the Hon. S. H. Treat, dist. judge, sitting as circuit judge of the circuit court of the United States, southern district Illinois:

Your petitioners, def'ts named in the above-entitled cause, except Clarrissa Jordan (who has been dismissed by complainants), in their motion represent that after having prayed an appeal on the overruling of the motion on petition for rehearing at this term of the court on the 10th of June, 1886, from the decree rendered against them in the said cause by your honor and the Honorable W. S. Blodgett, dist. judge, sitting and holding the circuit court of this district, on the 25th of January, 1886, that by the proceedings therein had the several causes hereinafter set out stand as one con-
743 solidated case, had on motion of complainants, and to be entitled as one cause, J. C. Cloyd *et al.*

That the order so consolidating the same was entered on the 2nd day of January, 1884.

And as certain parties def'ts refuse to join in the appeal heretofore allowed, the above-named def'ts, who desire the appeal, present this their petition for summons and severance from such as do refuse, and they show here to the court, by the cause of action as set out by the complainants' bill of complaint, that the right of an appeal exists to these petitioners after the severance is so made.

That the amount in value as the matter of dispute exceeds $5,000, exclusive of costs, and that the decision does not give full faith and credit to the judicial proceedings of the courts of the State of Illinois.

Your petitioners show, from the record in the cause, the action to be the foreclosure of a mortgage *in solido* for $800,000, with interest at 7 per cent. from April 20th, 1859, for themselves, the complainants, and all others alike situated, or that the court had no jurisdiction, as the amount in value as the matter in dispute against each defendant is less than $500.00, as alleged.

744 The facts as alleged by complainants (and admitted by def'ts, except that def'ts deny any consideration paid and validity of the so-called mortgage, and assert an adverse title thereto, and that complainants have no standing in court) are as follows:

J. C. Cloyd, T. C. Austin, and J. B. Cornell, on the 25th of January, 1882, filed their bills of complaint, by Edwin Beecher, their att'y, against Clarrissa Jordan, Michael Book, T. J. Pettyjohn, and others of these def'ts, setting up two instruments pretending to be the deed and mortgage executed by Wayne county on the 20th of April, 1859, which recites that it is to the use of Mt. V. R. R. Co. to secure the payment of $800,000 of the bonds to be issued by the Mt. V. R. R. Co., dated April 20th, 1859, payable in twenty years, with interest coupons, payable semi-annually at 7 per cent., alleging default of all interest and principal.

That by the terms of the said mortgage, wherein it recites that on default of one year's interest becoming due and payable, to wit, on the 20th of April, 1860, that it was lawful to have entered into and taken possession of all and singular the same of that date.

745 That said deed and mortgage described 100,000 acres of the swamp lands of Wayne county.

That the Mt. V. R. R. Co. executed on the same date a mortgage on all their property acquired or to be acquired with their franchise to secure the same payment of issue of bonds.

They allege that proceedings had before this been instituted, as appears of record, to foreclose the said deed and mortgage, and from which it appears that part of the holders of the bonds of the Mt. V. R. R. Co. for all filed a bill of complaint against the Mt. V. R. R. Co., impleading the county of Wayne, March 5th, 1865. Summons served on county of Wayne May 11th, 1865, Mt. V. R. R. Co. entering their appearance.

Complainants therein alleged Isaac Seymour, the trustee, was dead,

and prayed the appointment of one to execute the trust, alleging default of all interest, which cause proceeded to a decree after several amendments against the Mt. — R. R. Co., with sale, Aug., 1868, of all property or right of property, with its franchise, The Mt. V. R. R. Co., the defendant therein, being the purchaser. Sale confirmed and deed given Sept. 5th, 1869.

Then by amended bill filed Jan. 17th, 1870, with new complainants for the first time proceeding against the county alone
746 and for the first time setting up for the base of power and consideration for the execution of the so-called mortgage the assignment and fulfillment of a certain contract with Vanduser, Smith & Co., made with Wayne Co., dated Nov. 19th, 1858, on which a decree was had June, 1874 (case reported 16 Wall., Kennicott *vs.* County of Wayne, 467); sale Sept. 18th, 1877; confirmed Sept., 1878; deeds by master in chancery May 31st, 1879. That complainants therein bid it off at three times its assessed value, and divided it meets and bounds to represent each one's interest.

That the now complainants, J. C. Cloyd, J. B. Cornell, Elizabeth H. Taylor, Lucinda A. Walker, F. B. Hane (whose causes are consolidated as herein stated), were not parties to the said suit of foreclosure, nor did they hold any bonds, obligations, or interest coupons, nor were they purchasers at the sale, nor had they any interest therein, but deraigning title therefrom at subsequent dates by being purchasers of some one who claimed a purchase of the purchaser at the master's sale.

The complainants then allege that these def'ts were not parties to the said foreclosure suit, nor had they been foreclosed; that
747 they had purchased the lands of the county of Wayne, and were in possession long before any suit to foreclose the said mortgage was commenced without being made parties thereto; that the county of Wayne had sold and given possession and listed the same for taxation of all lands described in the said mortgage on or before Oct. 13th, 1868, before the amended bill of Jan. 17th, 1870, was filed.

On these statements of facts the complainants, J. C. Cloyd, T. C. Austin, and J. B. Cornell, pray that they may be subrogated to the rights of the original parties (Kennicott *et al. vs.* The County of Wayne, 16 Wall., 467) to the amount of the bid made at the sale as agreed upon by the purchasers Sept., 1877, on each tract of land as now claimed to be held by these complainants through their chain of title, and that the same may be enforced by a foreclosure of the so-called mortgage of the respective tracts of lands against each of these def't-, jointly and severally.

That the other causes consolidated herewith were commenced as follows: On the 26th of January, 1882, Elizabeth H. Taylor
748 and heirs of M. Alexander, surviving executor of Peter McMartin, Wm. Rolston, Joseph Waxelbaum, Chas. Coe, J. Sargent Smith, Arthur F. Gould, instituted in one complaint a like proceeding against J. B. Bozarth and others of these def'ts, describing other lands, setting up the same cause of action, with the same prayer, whereupon the same were consolidated, as before stated.

That on the 6th of Oct., 1884, F. B. Hane, by Walter B. Scates as an att'y, instituted like suits and — like character, intervening in the above consolidated causes, against divers of these def'ts, alleging that he had purchased by quitclaim of Walter B. Scates on the 4th of April, 1884, setting up the same facts as had J. C. Cloyd and adding an allegation to sustain a prayer for an allegation that — hundred and more suits had been instituted in the State court to set aside his grantor's title, and prayed an injunction to stay further proceedings of suits in the State courts of Illinois, alleging "that the supreme court of the State of Illinois in a test case—Scates *vs.* King, 110 Ill., page 456—had decreed and set aside, cancelled and rendered null and void, his grantor's (Walter B. Scates')
749 title in suit by these def'ts in an action to remove cloud from title against his grantor before he purchased. Therefore he prayed an injunction to stay, to stop, and annul any further proceedings in the State courts" until the mortgage, so called, might be foreclosed in this court.

Feb. 13th, 1885, Lucinda A. Walker, by H. C. Whitney, her att'y, filed like petition with like allegation as that of J. C. Cloyd *et al.* and F. B. Hane, alleging quitclaim as her interest and title from H. C. Whitney and Elizabeth H. Taylor, March 4th, 1884, and adding further to sustain the prayer for an injunction against proceedings in the State courts as follows: "That on a square issue made in case of J. B. Scudamore *vs.* H. C. Whitney (her grantor) the State court held and adjudged that the said suit, Kennicott *et al. vs.* The County of Wayne, to foreclose the said trust deed and mortgage was not commenced in this court until Jan. 17th, 1870, so as to bind any one except the county of Wayne alone; that it will decide the same in all cases if suffered to proceed, and will totally annul and absolutely destroy H. C. Whitney's and Elizabeth H. Taylor's title (her
750 grantors) to all lands, as the county of Wayne had sold and deeded away all before that date."

That on the 13th of March, 1885, J. C. Cloyd filed another bill of complaint intervening in the consolidated cases, alleging the same facts as in the original bill, and in addition thereto the further allegation as made for the injunction as prayed in complaint of F. B. Hane and Lucinda A. Walker, alleging purchase of his interest and title of Walter B. Scates after the supreme court of Illinois had decreed it null and void.

Which injunction as above prayed was granted, but, on motion before Hon. W. Q. Gresham, dissolved on the 16th of May, 1885.

Your petitioners show that the above causes were instituted and consolidated as one case before issue was joined.

That they were instituted by each of the complainants in harmony with each other and for the purpose in a legal sense and rule of law to foreclose a mortgage *in solido* for $800,000 and interest for 28 years, to be satisfied on foreclosing the lands herein de-
751 scribed and as against these def'ts to the amount of $18,560, making the following-named def'ts def'ts to the so-called mortgage, and alleging and praying how much each tract must sell for in amount.

	Subdiv.	Sec.	Town.	Range.	Amount.	
A. Winters	N e s e	9	3 s	7 e	240	
J. D. White	N w n w	11	2 s	6 e	240	
J. Manahan	S w s w	11	2 s	6 e	240	
Wm. Shaeffer	N e n e	10	3 s	7 e	240	
Sam. Sparks	S e n w	29	2 n	9 e	240	
Thos. Bain	S w s w	11	2 s	6 e	240	
H. T. Garrison	N ½ n w	9	1 s	5 e	480	Decree pleaded had in State court.
Sam. Garrison	S w n w	9	1 s	5 e	240	
Michael Book	S e s e	11	2 s	6 e	240	
Henry Jones	N ½ n w s e	21	2 s	6	120	
Andrew Martin	N e s e	30	1 s	5	240	
G. C. Garrod	W ½ s w	31	1 s	5	480	
H. Tucker	N ½ s e	12	3 s	7	480	Decree pleaded had in State court.
Elizabeth Smoke	S e n e	14	2 s	6	240	
John Bain	N e s e	10	2 s	6	440	
Sarah St. Leger	N e s e	34	1 s	9	240	
Lavina Sumpter	W ½ n w	5	1 s	8	320	
Wm. Compton	S w s w	14	1 n	9	260	
J. W. Atkinson	N e n e	13	2 s	6	240	
N. N. Borah	E ½ s e	22	2 s	6	480	
N. N. Borah	W ½ s w	23	2 s	6	480	
E. T. Hall	S w	10	3 s	7 e	640	
752 E. T. Hall	E ½ n w	10	3 s	7 e	320	
E. T. Hall	W ½ n e	10	3 s	7	320	
D. L. McCawley	S w	10	3 s	9	960	
D. L. McCawley	S w s w	1	3 s	9	240	
R. H. Puckett	N e n w	6	3 s	8	560	Decree pleaded had in State court.
John Wagner	S e s w	30	2 s	9	480	
Thos. Beyhamer	N w n w	17	3 s	8	400	
John Murphey	W ½ n e	2	3 s	7	480	
Joseph Palmer	N e s w	7	3 s	7	400	
P. R. King	N e n w	9	2 s	9	360	
Margaret Sparks	W ½ n e s w	29	2 n	9	360	
Susan Pharr	N e n w	10	1 n	9	240	
A. Blakely	S w s w	26	1 n	9	240	
A. Wall	S w n e	21	1 s	9	320	Suit pending in State court.
M. Dalton	S e n e	35	1 s	5	360	
Jas. McCleary	N e n e	30	2 n	9	240	
Cline & Beard	S e n e	30	2 n	9	240	
Elizabeth Slover	W ½ s w s e	11	1 n	5 e	120	
Wm. Robinson	W ½ n e n w	8	3 s	9	400	
J. C. Williams	N w s e	19	2 n	9	240	
Geo. Draper	S w s e	4	3 s	6	200	Suit pending in State court.
H. Tompkins	N ½ s e s e	22	1 s	5	120	
Wm. Garrison	N w s e	19	2 s	6	240	
W. J. & A. Osterman	N w s e	2	1 n	9	400	
Wm. H. Dobbs	S e s w	23	1 n	9	240	Disclaimed.
J. B. Borah					D.	Disclaimed.
Wm. A. Atteberry	N e n w	17	3 s	8	400	
753 M. M. Wheeler	N ½ n e	27	2 s	6 e	320	Decree pleaded in State court.
M. M. Wheeler	S w n e	27	2 s	6	160	Decree pleaded in State court.
Malinda Sanders	S w s e	11	2 s	5	320	Decree pleaded in State court.
Henry Kincart	S w n w	17	3 s	8	400	Decree pleaded in State court.

	Subdiv.	Sec.	Town.	Range.	Amount.	
Wm. Mabery	N w s e	4	3 s	6	240	Decree pleaded in State court.
Geo. F. Smith	S w s w	26	1 n	5	240	
L. J. Rider	N w s e	4	3 s	7	160	
L. J. Rider	S e s w	4	3 s	7	160	
John Johnson	N ½ n e	18	3 s	9	480	
John Hafflee	N e s w	8	3 s	9	400	
D. L. McCawley	N e	12	3 s	9	640	Disclaimed.
D. L. McCawley	S ½ n w	12	3 s	9	320	Disclaimed.
D. L. McCawley	N ½ s w	12	3 s	9	320	Disclaimed.
Wm. N. Borah	N e s w	24	1 s	8	400	Plea, d e c r e e in State court.

The above causes were instituted, consolidated, tried, and heard as one cause to foreclose the so-called mortgage, alleging that after they, the complainants, had deraigned title dating back to the master's sale, Sept. 18th, 1877, under the decree heretofore set out in the Kennicott suit, they discovered, and the supreme court of the State of Illinois had so decided in a test case against them, Scates *vs.* King, *supra*, that no foreclosure had been had to bind any one,
754 and that all defense were open to these defendants against the so-called mortgage, and on the trial of the merits decided there was no valid mortgage nor debt nor any power to execute a mortgage; that all title acquired thereunder was null and void.

And for that they have brought their suits, now herein consolidated, to foreclose the said so-called mortgage *in solido* for $800,000, with interest at 7 per cent. from April 20th, 1859, by a proceeding to be subrogated to the right of the complainants to the original decree had in 1874 to the extent of foreclosing the lands herein described.

The defense of each defendant is that he owes nothing, and that his lands are not liable, or that they are liable for the whole debt; that the circuit court had no jurisdiction of the parties or the subject-matter; that their decree and title in Kennicott suit was obtained by and through fraudulent evidence; that there never was nor could have been any valid mortgage.

Wherefore, as the matter in dispute being an action to foreclose a mortgage *in solido*, and the matter in dispute exceeds $5,000.00, exclusive of cost, after the severance herein prayed is made,
755 and as the decree has been taken against divers parties who have disclaimed or have no interest in the suit and against parties who have not entered an appearance and on whom no return of service of summons is made and others who refuse to join in the appeal—

Your petitioners for the appeal ask that a summons, severance, and service be had from the following def'ts as refusing, as having no interest, and having disclaimed: Joseph Hunsinger, J. J. Funkhouser, Sam. Mundy, Wm. Smith, J. W. Hilliard, Thos. Atteberry, Asa F. Atteberry, Thos. J. Pettyjohn, John Keen, Jr., A. K. Atteberry, Geo. Warren, F. M. Burgess.

As refusing, no return of any service of summons being had and no appearance having been entered: V. C. Borah, Wm. M. Branson, Geo. Johnson, Conrad Kern, B. Stephens, James A. Boyd, Mariah Harlan, Wm. Smith, S. M. Hill, Thos. J. Clark, J. B. Odell, John Stanley, James Stroud, Wm. Carson, J. C. Weaver, J. W. Anderson, A. A. Bruce, John Harper, M. Cravens, Wm. Rhodes, Wm. H. Grant, J. C. Bestow.

As refusing to join in the appeal: Richard Wilson, C. Peddicord, Van R. Price, R. D. Adams.

756 H. TOMPKINS,
Att'y for Petitioners.

(Endorsed:) Filed August 5, 1886. J. A. Jones, clerk.

Appeal Bond.

UNITED STATES OF AMERICA, } *ss:*
State of Ill., }

In Circuit Court United States, Southern Dist. Ill. June Term, 1886.

J. C. CLOYD, J. B. CORNELL, T. C. AUSTIN, Elizabeth H. Taylor, Lucinda A. Walker, The Heirs of M. Alexander, Surviving Executor of Peter McMartin, Wm. Ralston, Joseph Waxelbaum, Chas. Coe, J. Sargent Smith, Arthur F. Gould, and Fernando B. Hane

v.

CLARISSA JORDAN, N. N. BORAH, A. WINTERS, J. D. White, Heir Robert White, Deceased; J. B. Manahan, T. F. Bane, Michael Book, D. McCauley, Henry Jones, Andrew Martin, Geo. C. Garrod, H. Tucker, Elizabeth Smoke, John Bane, Sarah A. St. Leger, Lavina

757 Sumpter, Wm. Compton, J. W. Atkinson, R. H. Puckett, John Waggoner, Thos. Beyhamer, John Murphy, Joseph Palmer, P. R. King, Margaret Sparks, Widow and Heir of Sm. Sparks, Deceased; Susan Pharr, Andrew Bleakley, A. L. Wall, R. H. Campbell, M. Dalton, James McCleary, Elizabeth Slover, Wm. Robinson, Henry Garrison, Sm. Garrison, J. C. Williams, Geo. Draper, Wm. Shaeffer, H. Tompkins, Wm. Garrison, Wm. F. Osterman and Abraham Osterman, Wm. H. Dobbs, J. B. Borah, Wm. A. Attebery, John T. St. Leger and Heirs of Thos. St. Leger, M. M. Wheeler, Malinda Sanders, Henry Kincart, Geo. F. Smith, E. T. Hall, L. J. Rider, Wm. Mabry, John Johnson, John Hafflele.

} Reforeclosure of Mortgage.

Know all men by these presents that we, M. M. Wheeler, N. N.

Borah, A. Winters, Wm. R. Cox, Hiram Tucker, Wm. Mabery, Geo. W. Draper, L. D. Leach, Geo. R. Leach, Albert Simms, Joseph G. Foster, John R. Murphy, John G. Pettigrew, Thos. Beyhamer, James W. Atkinson, W. T. Palmer, Michael Book, W. T. Faulkner, S. S. Palperman, John St. Leger, Wm. B. King, Wm. B. Massey,
758 Zim. Bazwell, Hamilton Jones, John Bain, J. E. Sons, E. Mabery, Malinda Sanders, A. J. Pettigrew, T. H. Bain, Sarah St. Leger, A. R. Robinson, Samuel Means, C. M. Garrettson, Marion Fields, John Sims, Joseph D. White, R. H. Jenkins, W. Kuykendall, J. R. Buchannan, Wm. Trotter, John K. Wright, H. M. Twadell, Geo. W. Mabery, D. H. Clevinger, D. L. McCawley, J. Val. Borah, Andrew Bleakley, Anderson L. Wall, B. W. Burkley, V. C. Borah, John L. Waggoner, J. M. Harris, Levi Wheeler, H. Tompkins, H. H. Jones, are held and firmly bound unto the above-named complainants, J. C. Cloyd, Elizabeth H. Taylor, Lucinda A. Walker, The Heirs of M. Alexander, Surviving Executor of Peter McMartin, Wm. Ralston, Joseph Waxelbaum, Chas. Coe, J. Sargent Smith, Arthur F. Gould, J. B. Cornell, T. C. Austin, Fernando B. Hane, their heirs and assigns, in the sum of five thousand dollars, to be paid to the said complainants, their heirs and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal- and dated this 2 day of Aug., 1886.

759 Whereas the above-named defendants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the southern district of Ill. on the 10th of June, A. D. 1886 (except Clarissa Jordan, who was dismissed):

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute their said appeal to effect and answer all damage and costs if they shall fail to prosecute and make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

N. N. Borah.	[L. S.]	W. D. Massey.	[L. S.]
Hiram Tucker.	[L. S.]	Zim. Bozarth.	[L. S.]
William Mabery.	[L. S.]	Hamilton x Jones.	[L. S.]
Geo. W. Draper.	[L. S.]	John Bain.	[L. S.]
A. Winter.	[L. S.]	J. E. Sons.	[L. S.]
Wm. R. Cox.	[L. S.]	E. Mabery.	[L. S.]
Albert Simms.	[L. S.]	J. R. Buchannan.	[L. S.]
M. M. Wheeler.	[L. S.]	L. D. Leach.	[L. S.]
Joshua G. Foster.	[L. S.]	Geo. R. Leach.	[L. S.]
W. T. Faulkner.	[L. S.]	John R. Murphy.	[L. S.]
S. S. Palperman.	[L. S.]	John G. Pettigrew.	[L. S.]
John St. Leger.	[L. S.]	Thomas Behymer.	[L. S.]
Wm. B. King.	[L. S.]	James W. Atkinson.	[L. S.]
760 W. T. Palmer.	[L. S.]	John K. Wright.	[L. S.]
Michael Book.	[L. S.]	H. M. Twadell.	[L. S.]
Malinda Sanders.	[L. S.]	G. W. Mabery.	[L. S.]

A. J. Pettigrew.	[L. S.]	his D. H. x Clevinger. mark.	[L. S.]
F. H. Bain.	[L. S.]	D. W. Barkley.	[L. S.]
Miss Sarah St. Ledger.	[L. S.]	V. C. Borah.	[L. S.]
A. R. Robinson.	[L. S.]	H. H. Jones.	[L. S.]
Samuel Means.	[L. S.]	D. L. McCawley.	[L. S.]
C. M. Jacobson.	[L. S.]	J. Voll Borah.	[L. S.]
Marion Field.	[L. S.]	Andrew Bleakley.	[L. S.]
John Simms.	[L. S.]	Anderson L. Wall.	[L. S.]
his Joseph x D. White. mark.	[L. S.]	John L. Wagner.	[L. S.]
R. A. Jenkins.	[L. S.]	G. M. Harris.	[L. S.]
W. Kukendale.	[L. S.]	Levi Wheeler.	[L. S.]
William Trotter.	[L. S.]	H. Tompkins.	[L. S.]

STATE OF ILL., *Wayne County,* } ss:

I, H. Tompkins, being duly sworn, depose and say that I have witnessed each and every signature to the above bond, and that the parties whose signatures *is* hereto affixed *is his* genuine signature-.

H. TOMPKINS.

Subscribed and sworn to before me this 4th day of Aug., 1886.

R. E. MABRY,
Cir. Clerk.

761 STATE OF ILLINOIS, *Wayne County,* } ss:

I, R. E. Mabry, clerk of the circuit court in and for said county and State, do hereby certify that the signatures to the foregoing bonds are genuine, and that the parties are well known to me as being far more than ample security for said bond.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Fairfield, this 4th day of August, A. D. 1886.

R. E. MABRY,
Clerk of Circuit Court, Wayne County, Ill.

(Endorsed:) Approved August 5th, 1886. S. H. Treat, dis. judge.
(Also endorsed:) Filed August 5, 1886. J. A. Jones, clerk.

762 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

In the Circuit Court of said District.

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify

that the foregoing is a true and complete copy of all the papers filed and the proceedings thereon had in a certain consolidated cause lately pending in said court, wherein in the first of said causes James C. Cloyd was complainant and Samuel Mundy, William Sandlin, Henry T. Garrison, Samuel Garrison, Joseph White, William White, and Martha J. Wheeler, heirs of Richard White, dec'd; James B. Manahan, William F. Bain, William Shaeffer, E. T. Hall, Elizabeth E. Slover, F. M. Burgess, Adam Osterman, Wm. J. Osterman, and Samuel Sparks were defendants; and in the second of said causes Chauncey T. Austin was complainant and Michael Book, William Morris, and Daniel L. McCauley were defendants; and in the third of said causes John B. Cornell was complainant and Thomas J. Pettyjohn, Jacob C. Williams,
763 Richard Wilson, James W. Hilliard, Edward Baird, Samuel Sparks, James F. Cline, James McCleary, George Warren, Susan Pharr, William H. Dobbs, Andrew Martin, Ansel K. Atterberry, Asa F. Atterberry, Howland Topkins, John Keen, Jr., George C. Garrod, N. N. Borah, and Preston R. King were defendants; and in the fourth of said causes Elizabeth H. Taylor, Henry M. Alexander, surviving executor of Peter MacMartin, deceased; William L. Ralston, Joseph Wotelbaum, Charles A. Coe, J. Sargent Smith, and Arthur F. Gould were complainants and Caleb Peddicord, Micajah Dalton, John Bain, Elizabeth Smoke, A. Winters, Hiram Tucker, T. F. Bain, J. W. Atkinson, William Garrison, L. J. Rider, Stephen J. Renfro, Welcome Compton, Andrew Bleakley, Sarah St. Leger, William St. Leger, Harrison St. Leger, John E. St. Leger, and Emma St. Leger, heirs-at-law of Thomas St. Leger, dec'd; Michael Book, J. W. Hilliard, William Shaeffer, D. L. McCauley, Lavinia Sumpter, and J. Skelton were defendants, and the intervening petition of Fernando B. Hane filed therein against John C. Bestow, Edward Bonham, Charles A. Beecher, George John-
764 son, Conrad Karn, Malinda Saunders, The Ætna Life Insurance Company, James R. Bain, B. Stevens, John R. Murphy, Lewis J. Rider, Alexis Rider, W. M. McReynolds, James A. Boyd, Robley D. Adams, Jane Ridgeway, Allen Cope, William Robertson, Valentine C. Borah, Wm. N. Borah, Maria Harlan, George F. Pykert, James K. Parmer, Thomas Behmyer, Wm. White, Wm. Smith, Van R. Price, Richard Campbell, Andrew Wall, Sterling M. Hill, F. W. Tracy, Samuel A. Skinner, Wilkenson Brock, John L. Waggoner, John Haffle, Thos. J. Clarke, James Stroman, John R. Odell, James M. Kelley, John Stanley, John Johnson, Gilbert J. George, William Carson, Oliver P. Murphy, Wm. Rhode, J. C. Weaver, Wm. M. Branson, John W. Anderson, A. W. Bruce, Martin M. Wheeler, Geo. W. Draper, Wm. Mabry, Susan Pharr, John Harper, Marshall Pool, J. Huntzinger, Geo. W. Odell, Milton Cravens, John Funkhouser, R. H. Prickett, H. Kincart, James Martin, Robert T. Forth, Sarah Bane, and W. H. Grant, and also the intervening petition of Lucinda A. Walker filed therein against H. Tompkins, Robert P. Hanna, George Warren, Sarah A. St. Leger, S. A. Skinner,
765 Hiram Tucker, Henry T. Garrison, E. T. Hall, D. L. McCauley, and J. R. Bain as fully and completely as the same ap-

pear from the records and files of said consolidated cause now in my office.

The Seal of the Circuit Court of the United States, South'n Dist. Ill.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Springfield, in said district, this 4th day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

J. A. JONES, *Clerk.*

H. TOMPKINS, of Fairfield, Ill.,
JAMES McCARTNEY, of Springfield, Ill.,
T. J. GOLDEN, of Marshall, Ill.,
Att'ys for Appellants.

766 *Assignment of Errors.*

1st. The finding of the facts by the court is contrary to the evidence.

2nd. Appellants' demurrer to complainants' bill should have been sustained and complainants' bills dismissed.

3rd. Complainants' bills on answer, pleas, disclaimers, and evidence should have been dismissed.

4th. The petitions for rehearing should have been granted.

5th. It was error to give judgment against appellants for cost.

6th. That on the facts as alleged by complainants it is shown that the court had no jurisdiction of the subject-matter, it not being cognizable in a court of equity.

7th. It is error to admit — appellees a part of those who dereign title from purchasers of purchasers at a sale under a foreclosure of a mortgage of a part of said lands, describing 100,000 acres to be subrogated to the amount of an agreed bid made by complainants in said foreclosure suit on each 40-acre tract as a base of value, or right to proceed against these appellants jointly or severally for a reforeclosure for the amount of said bid, it being less in amount of value of $500 against each appellant for a redemption by a supplemental bill to the original suit on the allegation that the appellees nor appellants were parties thereto, and that appellants were
767 in possession by deed from the county of Wayne, the said mortgagor, before the original suit to foreclose was commenced, and under said subrogation to decree, as prayed, special, seperate, and fixed amounts, with costs apportioned against each seperate tract of 40 acres, as the amount for a redemption and against each appellant, it being less in amount and value than $500 as based on the agreed bid under the sale of said foreclosure, and if not redeemed to be foreclosed again for the said fixed sum against each appellant.

8th. No jurisdictional amount is shown of the value of the matter in dispute as between each complainant and defendent to give the circuit court jurisdiction.

9. Full faith and credit is not given to the judicial decisions of the courts of the State of Illinois.

10. Appellants' title is shown to be adverse to the so-called mortgage sought to be foreclosed.

That the action was barred by the statute of limitation.

That there was no power to have executed the so-called mortgage.

That no consideration was paid.

11th. It was error to decree tax titles obtained on said lands null and void.

12. It was error to retain jurisdiction after a fraudulent transfer was shown to have been made to give jurisdiction.

13. Two district judges can have no authority to hold a circuit court.

Wherefore appellant- pray a reversal and dismissal of said suit.

H. TOMPKINS, of Fairfield, Ill.,
JAMES McCARTNEY, of Springfield, Ill.,
T. J. GOLDEN, of Marshall, Ill.,
Att'ys for Appellants.

Endorsed on cover: S. Illinois C. C. U. S. No. 147. M. M. Wheeler, N. N. Borah, A. Winters, William R. Cox, *et al.*, appellants, *vs.* J. C. Cloyd, Elizabeth H. Taylor, Lucinda A. Walker, *el al.* Filed October 11, 1886.

FILED
NOV 22 1889
JAMES H. MCKENNEY
CLERK

No. 147.

IN THE

SUPREME COURT OF THE U. S.

OCTOBER TERM, A. D., 1889.

M. M. WHEELER, et al.
vs.
JAMES C. CLOYD, et al.

Appeal from Circuit Court, U. S., for Southern District of Illinois.

AND CASES CONSOLIDATED THEREWITH.

RE-FORECLOSURE.

STATEMENT AND BRIEF OF APPELLANTS.

H. TOMPKINS, Atty. for Appellant.

Press Print, Fairfield, Ill.

No. 147.

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M. M. WHEELER, et al.
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} Appeal from Circuit Court, U. S., for Southern District of Illinois.

AND CASES CONSOLIDATED THEREWITH.

ACTION, RE-FORECLOSURE.

STATEMENT AND BRIEF.

STATEMENT.

A PROCEEDING CALLED A REFORECLOSURE.

This action grows out of a seeming conflict in the decision in the matter of an attempt to foreclose a pretended trust deed and mortgage in case of Kennicott et al. vs the County of Wayne, by this Court reported 16 Wall, 452, wherein it now appears, by admission of Appellees, that these Appellants and others should have

been made parties but were not, and the decision had by the Supreme Court of the State of Illinois, entitled, Scates vs King, 110 Ill., page 456, involving the validity of the said trust deed and mortgage, and the rights acquired under the decree, sale and deraignment of title, wherein the Appellants and Appellees or their grantors were parties.

FACTS.

An attempt was made in the Circuit Court, Southern Dist. of Ill. by Kennicott et al. vs Mt. V. R. R. Co., impleading the County of Wayne, *supra*, to foreclose a trust deed and mortgage said to be executed by the County of Wayne, dated April 20, 1859, describing about 100,000 acres of land to secure the payment of $800,000 of the bonds of the Mt. V. R. R. Co.

The first proceeding was instituted March 7th, 1865, to have a trustee appointed in place of Isaac Seymore, deceased, to execute the trust, as conditioned as well as the trust declared in a mortgage, executed by the Mt. V. R. R. Co., of the same date, on their franchise, all property or rights of property to secure the payment of the same bonds.

A decree of foreclosure was had against the Mt. V. R. R. Co. at the June term, 1868, and by virtue thereof, the franchise, all property and rights of property was sold. The Mt. V. R. R. Co. being the purchaser in gross. (See Ex. H., record, 636). Then by amendment of the bill of complaint and with new parties Complainants January 17, 1870, filed in the said cause

against the County of Wayne alone the cause proceeded to a foreclosure of the trust deed and mortgage pretended to have been executed by the County of Wayne, with a decree of foreclosure, June term, 1877; sale Sept. 18th, 1878; Master's deeds May 31st, 1879.

Neither Appellants nor Appellees were parties to the foreclosure suit, while Appellees get their claim of title from purchasers of purchasers at the Master's sale, deriving it from the pretended trust deed and mortgage.

THE SEEMING CONFLICT—SCATES VS KING, 110 ILL., 456.

The facts appearing in the case of Scates vs King, supra, and in the case at bar, show that the County of Wayne had asserted adverse and notorious possession, and denied the execution and validity of the said trust deed and mortgage immediately after the pretended execution of the same, and continued to sell to Appellants and others, conveying the same as by Statute required, reciting that the conveyance was an indefeasible title in fee simple, giving possession, listing the lands for taxation as by Statute required on the sale of swamp and overflowed lands, and that all lands were so sold and in possesion and occupied open and notorious by these Appellants, before any suit was commenced to so foreclose, (see Ex. M., page 658), without Appellants being party thereto or bound thereby.

In this situation Appellants and others to protect their title and possession commenced suit in the State Courts, to set aside and annul the said trust deed and mortgage and all conveyances thereunder as a cloud of

title and that the same might be decreed null and void.

The above entitled cause, by agreement, was taken to the Supreme Court of the State as a test case for hundreds then pending. The decision of the Court being that Appellants not being parties to the foreclosure suit were not bound thereby, and on the facts proved decreed the the said trust deed and mortgage pretended to be executed by the County of Wayne with conveyances, thereby designed to be null and void.

APPELLEES' PROCEEDING.

On the decision being so rendered in Scates vs King, *supra*, the Appellees finding all lands occupied and held by Appellants and others adverse to their claim of title, commenced this proceeding in the Circuit Court, United States, Southern District Illinois, and calling it a re-foreclosure suit, and prayed that they might be subrogated to the rights of the original parties in the case of Kennicott et al. vs The County of Wayne, *supra*, and that a re-foreclosure might be had of each tract and against each Appellant and for the benefit of each of the Appellees in the consolidated case, as their respective deeds of deraigned conveyances might show.

ALLEGATIONS FOR EQUITY JURISDICTION.

The allegations in their respective bills of complaint are as follows:

F. B. Hane complains by W. B. Scates, his attorney, on a bill of complaint filed Oct. 6, 1884, in the consolidated case, that he had acquired title to certain tracts of land now in dispute from said W. B. Scates, dated April

4, 1884, and alleged to sustain a prayer to restrain the further proceedings being had in the State Courts, of the suits to annul the decree, sale and deeds had under the foreclosure suit. Kennicott et al. vs The County of Wayne, *supra*. "That a hundred and more suits had been instituted in the State Court to set aside his grantor's title and prayed an injunction to stay further proceedings, alleging that the Supreme Court of Illinois, in the test case, Scates vs King, *supra*, had decreed and set aside, canceled and rendered null and void, his grantor's title to the land in said suit, by these Appellants and against his grantor before the date of his deed of conveyance." See page 117-133.

Lucinda Walker filed her bill of complaint in the consolidated case by H. C. Whitney, her attorney, alleging her title from H. C. Whitney and E. H. Taylor, dated March 4, 1884, and to sustain the prayer for an injunction against proceeding in the State Courts, alleges that on a square issue made in case of J. B. Scudamore vs H. C. Whitney, her grantor and attorney, the State Court held and adjudged that the suit Kennicott et al. vs the County of Wayne, *supra*, to foreclose the trust deed and mortgage, was not commenced in this Court until the amended bill was filed, Jan. 17, 1870, so as to bind any one except the County of Wayne alone. That it will so decide the same in all cases if suffered to proceed and will totally annul and absolutely destroy her title to all lands, as the County of Wayne had sold and deeded away all lands before that date." Page 305-306.

The same with J. C. Cloyd, he files his bill in the consolidated case March 5, 1885, alleging that he acquired title by quit claim dated Feb., 1885, from Walter B. Scates, after the Supreme Court of the State of Illinois had rendered their decision during the aforesaid trust deed and mortgage of Wayne County, so pretended to be foreclosed with the decree, sale and deeds thereunder, null and void. See page 297-317.

To these proceedings his Honor granted a temporary injunction until a motion could be heard before Hon. W. Q. Gresham to dissolve the same, which was so dissolved, See page 297-317.

ADMITTED FACTS.

These allegations made by the Appellees in their bill of complaint, presents to the Court, the fact that no foreclosure was had in the case of Kennecott et al. vs The County of Wayne to bind any one, and that the Supreme Court of the State of Illinois, having jurisdiction of the parties and subject matter before the proceedings were commenced, and having deceed on full hearing, that the said trust deed and mortgage was null and void.

The Appellees call this proceeding a supplemental bill to the original suit, Kennicott et al. vs The County of Wayne, *supra*, and base their equity on the allegation that they are purchasers of purchasers deriving their title through such foreclosure. Their deeds of conveyances dating mostly in 1884 and 1885. Admitting at the same time that Appellants had purchased and was in possession

long before any suit to foreclose was commenced and were not made parties thereto nor bound thereby. And further, that the Courts of the State of Illinois had first acquired jurisdiction of the parties and the subject matter and had, before this suit was commenced, decreed that the said pretended trust deed and mortgage was null and void as well as the chain of conveyances through which the Appellees deraign their title.

To show the issue made we will present an abstract of Appellees' allegations.

ABSTRACT OF BILLS OF COMPLAINT.

The facts as alleged by Appellees, are as follows: J. C. Cloyd, page 14; T. C. Austin, page 38; and J. B. Cornell, page 57; on the 20th of January, 1882, filed their bills of complaint by Edwin Beecher, their attorney, against Clarissa Jordan, Michael Book, T. J. Pettijohn and other of these defendants, setting up two instruments pretending to be the deed and mortgage, executed by Wayne County, on the 19th of April, 1859, which recited, that it is to the use of the Mount Vernon Railroad Company to secure the payment of $800,000 of the bonds to be issued by the Mt. Vernon Railroad Company, dated April 20th, 1859, payable in fifteen years, with interest coupons payable semi-annually, at seven per cent., alleging default of all interest and principal. That all, by the terms of the said so-called mortgage wherein it recited, "and this indenture further witnesseth that the said parties of the first part, for themselves, and their successors do covenant and agree that if default shall be made in the

payment of the interest upon the said construction bonds or obligations, so that a sum equal to one year's interest of the whole amount of the said construction bonds or obligations already issued and secured by these presents, or that if default shall be made in the payment of the principal of the said construction bonds or obligations, that then, and from thenceforth, it shall and may be lawful for the said parties of the second part to enter into and upon, and take possession of all and singular, the lands and all the premises included, or intended to be included, in this mortgage."

That said deed and mortgage described 100,000 acres of the swamp lands of Wayne County. That the Mount Vernon Railroad Company executed on the same date a mortgage on all of their property acquired, or to be acquired, with their franchise to secure the payment of the same issue of bonds.

They allege that proceedings of foreclosure had before this been had as appears of record and reported in 16 Wall page 452, to foreclose mortgage of the Mount Vernon Railroad Company, and the said deed and mortgage of Wayne County, that these Appellees have acquired title by deed deraigned from the sale.

That the said proceedings were commenced March 5th, 1865, summons served on County of Wayne May 11th, 1865, Mount Vernon Railroad Company entering their appearance. Complainants therein alleged Isaac Seymour, the trustee, was dead, and prayed the appointment of one to execute the trust, alleging default of all

interest, which cause proceeded to a decree, after several amendments, against the Mount Vernon Railroad Company, June term, 1868, with sale August, 1868, of all property, or rights of property, with its franchise. The Mount Vernon Railroad Company, the Defendants therein, being the purchasers. Sale confirmed and deed given September 5th, 1869. See page record (Ex. H) page 639.

Then by amended bill filed January 17th, 1870, with forty new Complainants, for the first time proceeded against the county alone, and for the first time setting up for the base of power and consideration, to make a joinder connection and intersection under section 10 charter Mount Vernon Railroad Company, and for the execution of the so-called mortgage, the assignment and the fulfillment of a certain contract with Vanduser, Smith & Co. made with Wayne County, dated November 19th, 1858. See page 522 on which a decree was had June, 1874, (case reported, 16 Wall, Kennicott vs County of Wayne 467), sale September 18th, 1877; confirmed September, 1878; deeds by Master-in-Chancery May 31st, 1879.

That complainants therein through whom Appellees deraigned title bid it off at three times its assessed value, and divided it by metes and bounds to represent each one's interest.

That the now Appellees, J. C. Cloyd, J. B. Cornell, Elizabeth H. Taylor, Lucinda A. Walker, F. B. Hane, (whose cases are consolidated as herein stated) were not parties to the said suit of foreclosure, nor did they hold

any bonds, obligations, or interest coupons, nor were they purchasers at the sale, nor had they any interest therein, but deraigned title therefrom at subsequent dates by being purchasers of some one who purchased through parties at the Master's sale.

The complainants then allege that these defendants, now Appellants, were not parties to the said foreclosure suit, nor had they been foreclosed, that they had purchased the lands of the County of Wayne, and were in possession long before any suit to foreclose the said mortgage was commenced, without being made parties thereto.

That the County of Wayne had sold and given possession of all lands described in the said mortgage on or before October 13, 1868, before the amended bill of January 17, 1870, was filed. See page 14 to 82.

On this statement of facts the appellees pray that they may be subrogated to the rights of the original parties by a supplemental bill in (Kennicott et al. vs The County of Wayne, 16 Wall, 452) to the amount of the bid made at the sale, as agreed upon by the purchasers September 18, 1877, on each tract of land as now claimed to be held by these Appellees, through their chain of title, and that the said decree had in the Kennicott suit may be enforced by a reforeclosure of the so-called mortgage of the respective tracts of land against each of these Defendants, severally, to the amount of the agreed bid made by the Complainants to the foreclosure suit, it being three times the appraised value.

To these consolidated cases Appellants demurred to

Complainants' bills assigning special cause, see page 84, which on being overruled they made joint answers, denied being parties or privies to the said foreclosure suit, pleading the decrees had as alleged in the Supreme Court of the State of Illinois, and suits pending before this proceeding was commenced, (see pages 151-255), and set up and have proved the following as being the facts, and when compared with the proof in the case of Kennicott et al. vs The County of Wayne, 16 Wall 452, and now in this record is as follows:

COMPARATIVE PROOF.

In that case: The Appellee seems to have prooved that the County of Wayne held an election expressly, November, 1858, to, and did vote the lands in aid of the Mt. Vernon Railroad Company. See 16 Wall page 467.

In the case at bar: We show that no such election was held, that the only election had was had November 5, 1855, reading as follows:

"For donating the swamp land of Wayne county as a bonus to any company for building a railroad through Wayne county."

In that case: Appellant proved record of County Court with *placita* of special term April 20, 1859, to execute the pretended deed and mortgage.

In the case at bar: We prove record with no *placita* nor call for special term, and that two only of the three judges were present, without notice to the third, and that it was not done at the court house, but away from the court house on the out edge of the town; that a special

term of the Court was never called or held as pretended. Record evidence and J. E. Wilson, clerk, page 568 to 596.

In that case: It appears that the Mt. Vernon Railroad Company had completed the larger portion of its railroad in Wayne county under the contract of Vanduser, Smith & Co. 467, Page 16, Wall.

In the case at bar: We prove nothing was done, and that the Mt. Vernon Railroad Company abandoned all without a commencement, in the fall of 1860, and that the County of Wayne had declared the contract of Vanduser, Smith & Co., and all proceedings forfeited, and proceeded and did sell all lands, free from any contract or lien without intermission. See S. J. R. Wilson's evidence page 571-594. Ex. G., I. and M. 635, 644, 656.

In that case: It seems a plat and survey of the line of the railroad was made under the contract of Vanduser, Smith & Co. See Page 16, Wall.

In the case at bar: We show, they agreed to file plat in 1860 or forfeit all. We show further, none was filed but totally abandoned. See Ex. G and S. J. R. Wilson's evidence. *Supra.*

In that case: They seem to have shown that a joinder connection and intersection was had so as to be brought within the provision of section 10 of the charter of the Mount Vernon Railroad Company, by acquiring the contract of Vanduser, Smith & Co., and by work done thereunder, and on that they solely relied to show power and consideration for the acts of the County of Wayne to execute a mortgage to the Mount Vernon Rail-

road Company. See 16 Wall 467.

In the case at bar: We show that no consideration was paid; that no work was done under said contract; that all parties submitted to its forfeiture in 1860 as of its date; that no power existed either with or without its fulfillment, for the county to have mortgaged its lands to the use of the Mt. Vernon Railroad Company. See S. J. R. Wilson's evidence. Ex. G and I 635, 644.

In that case: They seemed to have proved that the County of Wayne had issued $400,000, of bonds, secured by the land, and that the county sold the bonds. See 16 Wall, page 468 and 467.

In the case at bar: We show that the county issued no bonds, nor did they hold, or agree to hold, nor did they sell any of the bonds of the Mt. Vernon Railroad Company. See Wilson's evidence.

In that case: They seem to have shown that the deed to Chas. Wood in trust to the use of the Belleville and Fairfield Railroad or any other railroad that would build a railroad through Wayne County, was in force and that it recited a connection with the Mt. Vernon Railroad. See 16 Wall 468.

In the case at bar: We show that the Mt. Vernon Railroad Co. is not known in the deed by any recital. Besides, the conditions were forfeited, and the lands were reconveyed back to the county by the terms and condition of the deed, August 20th, 1837. See page 567 to 595.

In that case: It nowhere appeared that the county

had declared the contract of Vanduser, Smith & Co. forfeited by its own terms, and had proceeded in 1862 by order of Court, to sell all the lands, in the same manner as was done before the execution of the said contracts, deed and mortgage, and free from lien and has done so.

In the case at bar: We show a right to declare the forfeiture and that it was done by order of the County Court and put upon record December, 1862, and that every tract was sold, the last on October 13th, 1868, by deed reciting that the county "granted an indefeasible title in fee simple." See J. C. Alexander's evidence, page 565 and Ex. M. page 656.

In that case: It nowhere appeared that these lands were occupied and held adverse therto under a legal power of the county to convey the lands.

In the case at bar: We show no power to aid the Mt. Vernon Railroad Company under the pretended mortgage, but that all had been sold by the county under a legal power to Appellants. See Ex. G. and I. page 591, 593, and Ex. M. page 655. See case, Scates vs King 110 Ill. 456, same being proved in this case.

After the above issue was joined and evidence taken Appellants filed an affidavit, setting up and alleging on information and belief that the deeds of conveyance, pretending to convey title by H. C. Whitney, Walter B. Scates and Elizabeth H. Taylor to F. B. Hane, Lucinda A. Walker and J. C. Cloyd, nonresidents of the State of Illinois, was a fraudulent conveyance, without consideration, to oust the jurisdiction of the State Court, and thus

fraudulently give the Circuit Court U. S. jurisdiction against which allegation and charge no proof was made. See page 419 Record.

DEFENSE OF APPELLANTS.

The defense of the Appellants is shown by the above facts as set up in the answer and proved to be a denial of the existence of any valid deed or mortgage, with a declaration of adverse holding, Ex. I., record page 593, by order of County Court to proceed and sell all lands. That no consideration was paid, but abandoned.

That the County of Wayne had no power to enter into, nor enforce any contract with the Mt. Vernon Railroad Company to construct a railroad in Wayne county, neither had the Mt. Vernon Railroad Company any power to construct, or enforce any contract with Wayne county to aid said road. That two of the judges out of any term of Court, or, order of Court, without notice to the third, could not, even if the power existed, execute a valid mortgage. That the Appellants purchased, free from any lien of the so-called mortgage. That the contract by assignment to the Mt. Vernon Railroad Company, of Vanduser, Smith & Co., being set up for the first time in the amended bill filed January 17th, 1870, with its fulfillment, was the only base of power and consideration on which the recovery was had.

That the time in which the work under the contract of Vanduser, Smith & Co., was to be commenced and to be completed, was made the essence of the contract, otherwise it was forfeited, and rendered void on such

failure, and that the selling of all the lands to divers hundreds of persons, giving possession, open and notoriously, and listing lands for taxation, was a declaration of forfeiture and of adverse holding.

That Appellees are barred by the statute of limitation. None of these facts as stated were proved in the original suit of foreclosure.

It was after the above defense had been full sustained by the Supreme Court of the State of Illinois, Scates vs King, *supra*, being made the test by agreement in hundreds of cases then pending against these Appellees' grantors, that this proceeding was instituted by the Appellees. Special reference is made to the case of Scates vs King, *supra*, for a statement of facts proved, and issue on the merits in that and in this cause.

DECREE.

With these facts and issue, the Court, in the case at bar rendered the decree as prayed. That these Appellants be decreed to pay the sum for which the respective tracts were bid off by agreement, at the said void foreclosure sale, in the case of Kennicott et al. vs County of Wayne, September 18, 1877, and if not paid, to be foreclosed for the amount set opposite each tract, and for the benefit of the respective Appellees in severalty as follows:

Appellees vs Appellants,	Sub Dv.	Sec.	T.	R.	Amt. to R'deem.
L. A. Walker vs A. Winter.....	ne se	9	3s	7e	$ 240
J. C. Cloyd vs J. D. White.....	nw nw	11	2s	6e	240
J. C. Cloyd vs J. Mannahan	sw nw	11	2s	6e	240
J. C. Cloyd vs Wm Shæffer	ne ne	10	3s	7e	240

Appellees vs Appellants,	Sub Dv.	Sec.	T.	R.	Amt. to R'deem.
J. C. Cloyd vs Elizabeth Sparks...	w½ se nw	29	2n	9e	120
J. C. Cloyd vs Thomas Bain	sw sw	11	2s	6e	240
J. C. Cloyd vs H. T. Garrison	nw nw	9	1s	5e	480
Alleged and decree pleaded; had in State Court.					
J. C. Cloyd vs Sam Garrison	sw nw	9	1s	5e	240
C. T. Austin vs Michael Book.....	se se	11	2s	6e	240
H. M. Alexander vs Michael Book	ne ne	14	2s	6e	240
Chas. A. Coe vs John Johnson ...	sw se	9	3s	9e	240
J. B. Cornell vs Andrew Martin...	ne se	4	1s	5e	240
J. B. Cornell vs G. C. Garrod	w½ sw	31	1s	5e	480
F. B. Hane vs H. Tucker	sw nw	12	3s	7e	240
L. A. Walker vs H. Tucker.....	n½ se	12	3s	7e	480
Alleged and degree pleaded; had in State Court. Page 185.					
F. B. Hane vs H. Tucker	w½ nw	7	3s	7e	2800
Decree had in State Court. Page 193.					
H. M. Alexander vs Eliz. Smook	se ne	14	2s	6e	240
L. A. Walker vs John Bain.....	ne se	10	2s	6e	440
L. A. Walker vs Sarah St. Ledger.	ne se	34	1s	9e	240
Suit in State Court.					
Chas. A. Coe vs Levina Sumpter..	w½ nw	5	1s	8e	320
F. B. Hane vs Levina Sumpter....	nw sw	5	1s	8e	160
J. Sargent Smith vs Wm. Campton	sw sw	14	1n	9e	260
E. H. Taylor vs J. W. Atkinson...	ne ne	13	2s	6e	240
J. B. Cornell vs N. N. Borah	ne se	22	2s	6e	240
J. B. Cornell vs N. N. Borah.....	se se	22	2s	6e	240
J. B. Cornell vs N. N. Borah.	w½ sw	23	2s	6e	480
J. C. Cloyd vs E. T. Hall.....	sw	10	3s	7e	640
J. C. Cloyd vs E. T. Hall.....	e½ nw	10	3s	7e	320
Disclaims.					
J. C. Cloyd vs E. T. Hall	w½ ne	10	3s	7e	320
E. H. Taylor vs E. T. Hall.....	w½ se	3	3s	7e	360
C. T. Austin vs D. L. McCawley...	sw	10	3s	9e	960
J. B. Cornell vs D. L. McCawley...	sw sw	1	3s	9e	240
F. B. Hane vs R. H. Pucket	ne nw	6	3s	8e	560

Appellees vs Appellants,	Sub Dv.	Sec.	T.	R.	Amt. to R'deem.
Alleged and decree pleaded; had in State Court.					
F. B. Hane vs John Wagner	se sw	30	2s	9e	480
F. B. Hane vs Thos. Beyhymer...	nw nw	17	3s	8e	400
F. B. Hane vs John Murphy.....	w½ ne	2	3s	7e	480
L. A. Walker vs Joseph Palmer..	w½ se	7	3s	8e	400
F. B. Hane vs John K. Palmer....	ne sw	7	3s	8e	989
J. B. Cornell vs P. R. King.....	ne nw	9	2s	9e	360
J. B. Cornell vs Margret Sparks...	w½ ne sw	29	2n	9e	360
Not swamp land.					
J. B. Cornell vs Susan Pharr	ne nw	10	1n	9e	240
A. F. Gould vs A. Bleakley	sw sw	26	1n	9e	240
F. B. Hane vs A. Wall	sw ne	21	1s	9e	320
Alleged by complainants; suit pending in State Court.					
Eliz. H. Taylor vs M. Dalton.....	se ne	35	1s	5e	360
J. B. Cornell vs James McClary....	se ne	30	2n	9e	240
J. B. Cornell vs Cline & Beard.....	ne ne	30	2n	9e	240
J. C. Cloyd vs Elizabeth Slover....	w½sw se	11	1s	5e	120
F. B. Hane vs Wm. Robinson.....	w½ne nw	8	1s	8e	200
J. B. Cornell vs J. C. Williams	nw se	19	2n	9e	240
J. B. Cornell vs J. C. Williams....	se se	19	2n	9e	240
F. B. Hane vs George Draper	sw se	4	3s	6e	200
Alleged by complainants; suit pending in State Court.					
J. B. Cornell vs H Tompkins	ne se	26	1s	5e	240
J. B. Cornell vs H. Tompkins.....	n½ se se	26	1s	5e	120
L. A. Walker vs Wm. Garrison.....	nw se	19	2s	6e	240
J. C. Cloyd vs W. J. & J. Osterman.	nw se	2	1n	9e	400
J. B. Cornell vs Wm. H. Dobbs	se sw	23	1n	9e	240
Disclaimed.					
F. B. Hane vs Wm. Atterberry.....	ne nw	17	3s	8e	400
F. B. Hane vs. M. M. Wheeler.....	sw ne	27	2s	6e	160
Decree pleaded; had in State Court. Page 151, 237.					
F. B. Hane vs Malinda Sanders ...	sw	11	2s	5e	320
Decree pleaded; had in State Court. Page 220, 228.					
F. B. Hane vs Henry Kincart ..	sw nw	17	3s	8e	400
Decree pleaded; had in State Court. Page 168.					

Appellees vs Appellants,	Sub Dv.	Sec.	T.	R.	Amt. to R'deem.
F. B. Hane vs Wm. Maberry	nw se	4	3s	6e	240
Decree pleaded; had in State Court. Page 203, 211.					
E. H. Taylor vs L. J. Rider.....	n½ ne	36	2s	6e	320
Disclaims.					
F. B. Hane vs L. J. Rider	nw se	4	3s	7e	160
F. B. Hane vs L. J. Rider.....	sw se	4	3s	7e	160
L. A. Walker vs Wm. Shæffer	e½ se	3	3s	7e	480
F. B. Hane vs John Johnson	n½ ne	18	3s	9e	480
F. B. Hane vs John Haffel	ne sw	8	3s	9e	400
L. A. Walker vs D. L. McCawley.....	ne	12	3s	9e	640
Disclaimed.					
L. A. Walker vs D. L. McCawley...	sw nw	12	3s	9e	320
Disclaimed.					
L. A. Walker vs D. L. McCawley...	n½ sw	12	3s	9e	320
Disclaimed.					
F. B. Hane vs W. N. Borah.....	ne sw	24	1s	8e	400
Alleged and pleaded; decree in State Court.					
F. B. Hane vs D. L. McCawley	ne	11	3s	9e	320
Disclaimed; n½ ne.					
L. A. Walker vs D. L. McCawley....	n½ nw	12	3s	9e	320
Disclaimed.					
L. A. Walker vs D. L. McCawley..	se nw	12	3s	9e	160
Disclaimed.					
E. H. Taylor vs J. B. Bozarth	nw nw	22	1s	5e	240
Decree admitted in State Court and party dismissed by H. C. Whitney					
F. B. Hane vs V. C. Borah.....	nw sw	13	1s	8e	560
Decree admitted in State Court by complainants.					

ERRORS.

1. It was error to entertain jurisdiction against the pleas of decrees and suits pending in the State Courts over the same matter, or against the parties, or the lands in question after disclaimer.

2. It is error to foreclose a mortgage in parcels of the whole to the use of any one of the many Complainants, and against any one of the many Defendants, and have decreed arbitrarily the amount to redeem each tract of 40 acres from any one of the numerous Complainants.

Redemption must be from the whole amount of debt.

Powell on Mortgages 342.

Jones on Mortgages Sec. 1063, 1070, 1075.

Purchasers of the equity of redemption to redeem must pay the whole debt.

There can be no severance until the debt is paid, or foreclosed under a legal proceeding.

Bradley vs Snyder 14 Ill. 263.

Mearham vs Hale 93 Ill. 141.

3. A fraudulent transfer of title will not give the United States Court jurisdiction. See page 419, record affidavit.

4. Two district judges cannot hold the Circuit Court nor a district judge be detailed to sit with a district judge to hold the Circuit Court. See *Plasita*. R. S. Sec. 592-609.

5. This proceeding is in violation of Sec. 723, R. S. U. S.

6. Full faith and credit is not given to the judicial decisions of the Courts of the State of Illinois.

JURISDICTION.

An appeal lies in this case as the jurisdiction of the Court below is a proper one for review.

Dred Scott vs F. A. Sanford 19 Howard 393.

If the action of Appelles could be sustained in severalty as an equitable action, the Circuit Court had no jurisdiction as no complaint claimed or proved as the matter in dispute to be of the value of $500 as against any Defendant.

"Jurisdictional fact may be looked into from the whole record."

Gregnen vs Astor 2 Howard 319.

—Oliver vs Alexander, 6 Peters 143.

—Spear vs Place, 11 Howard 522.

"Each Complainant must be able to sue each Defendant."

—Rich vs Lambert, 12 Howard 347.

—Strawbridge vs Carter, 3 Cranch 257.

—Corporation New Orleans, 1 Wheat 91.

—Paving Co. vs Mulford, 100 U. S. 147.

"If record shows Circuit Court had no jurisdiction, the Supreme Court will not award *venira facias de nove* but will dismiss the suit."

—Brighton vs Cabot, 3 Dall 19.

—McCormick vs Sullivan, 11 Wheat 191.

"It is a peculiar principle, rather than an exception to it, that an Appellate Court before whom a cause is brought of which the Court below had no jurisdiction may take jurisdiction, and will do so, as far as to annul and reverse the proceedings below."

—United States vs Nourse, 6 Peters 470, 495.

"Matter in dispute is meant the subject of litigation. The matter for which suit is brought, and on which issue

is joined. The matter in dispute is the debt claimed, not the damages or prayer for judgment."

—Rich vs Lambert, 12 Howard 352.

—Lee vs Watson, 1 Wall 337.

—Wilson vs Daniels, 3 Dall 401, 408.

The case at bar seeks a subrogation to the rights of the original parties under a void decree of foreclosure, not as parties nor purchasers, but deraigning title therefrom in parcels of the whole. They call it a supplemental reforeclosure.

A supplemental bill, to a foreclosure, suit alleging the equity of deeds by deraignment through purchase at Master's sale, praying to be subrogated and have a foreclosure against parties in possession by purchase of the so-called mortgagor, before the foreclosure suit was commenced, opens up the whole case, and all previous decrees, and orders, are vacated, that the original suit may be heard at the same time, and all parties must be brought in.

—Gibson vs Ross, 50 Ill. 385.

—3 Daniel ch pr 180.

—Storey's Eqt. Pld., Section 332, 335, 338, 352.

ACTION BARRED BY STATUTE OF LIMITATION.

"Until parties are made defendants in suit, though actually begun as against others, is not *lis pendens*, until brought in."

—Dumphy vs Riddle, 86 Ill. 22.

—Miller vs McIntyre, 6 Peters 61.

—Freeman on Judgments, Sec. 199.

—Storey Eqt. Plead., Sec. 904.

In the case at bar, the trust deed and mortgage bears date April 20, 1859. "By its terms, if default was made of the amount of one year's interest, the whole debt was due and the beneficiaries might enter." No interest was paid, hence the statute commenced to run April 20, 1860, twenty-two years before this suit was commenced.

CONCLUSION.

We submit that this action is either a reforeclosure as Complainants call it, and in that view it should be for the whole debt and against all lands described in the mortgage and for all parties in interest and against all parties in possession adverse; or, if brought in severalty on each Complainant's conveyance and deraignment of title, the remedy is at law. Appellees by their deeds got the title of their grantors, if they had no title, they must abide by it.

The foreclosure of a mortgage is an action for the whole debt and each tract is liable for the whole debt until legally foreclosed.

WANT OF PARTIES.

Appellees' claim is that of deraignment of title, to divers tracts a part of 100,000 acres of land described in a mortgage making and naming some 300 or more parties defendants, after hunting the tombstones of deceased, bringing only into court about 60, by service of summons or appearance, describing about 5,320 acres out of the 100,000 acres described in the so-called mortgage, setting up title deraigned from a void decree, dating after the

Supreme Court of Illinois had decreed their grantors' title null and void, clearly showing want of parties.

The State Court had jurisdiction of the parties, and the subject matter, and had found as a fact, that the County of Wayne had sold the fee free from any lien of the so-called mortgage, before any suit was commenced to foreclose, or bind any except the County of Wayne.

The State Court also found and decreed from the facts proved, and now proved in this case, that the so-called mortgage and deeds acquired by and through the foreclosure sale were null and void.

In the face of the allegations of Appellees and pleas of Appellants, of suits pending and decrees plead, in bar, with answers and disclaimers, the decree in this cause, ignored the entire defense, even on the merits, and decreed in severalty, each tract to be sold for the amount of the bid as made by agreement for a division of interest under the void foreclosure and sale September 18, 1877, *supra*, unless redeemed by each Appellant at the arbitrary value so fixed.

On these facts we submit that by no rule of equity can this action be sustained by supplemental bill against Appellants.

Complainants set up no new title not derived from the original party, nor matter of fact that did not exist before the original suit was brought. Appellants were in possession of these lands before the original suit of foreclosure was commenced, and should have been made parties.

The proceedings to have a reforeclosure in the case of Kennicott et al. vs The County of Wayne, *supra*, must be by the same and all parties, and it must be and appear material to the original cause, and such as could not have been brought into the original cause by amendment.

Story's Eq. Pl., 332-352.

It will appear to the Court, by the *plasita*, that the circuit court was held by two district judges. Hon. H. W. Blodgett, district judge of the Northern District of Illinois, being detailed to sit and assist Hon. S. J. Treat in holding the Circuit Court. We submit that this is unwarranted by the laws organizing the Circuit Courts of the United States. R. S. U. S., Sec. 592, 596, 609, and is without jurisdiction.

This cause involving the title to so large a body of land, equal to one-fifth of the county, and held by open and notorious possession for nearly thirty years adverse to the claim of Complainants and grantors, and yet being under a seeming conflict of decisions between the State and United States Courts, (but not on the same evidence) we submit that the importance of the matter at issue deserves more than a casual examination of the merits of the case as shown by the comparative proof as set forth in the cause and referred to in this brief on page ——.

Calling the Court's attention to the numerous errors assigned of record we submit that the suit should be dismissed at Complainants' cost.

All of which is respectfully submitted,

H. TOMPKINS,
Attorney for Appellants.

IN THE

Supreme Court of the U. S.

October Term, A. D., 1886.

M. M. WHEELER, et al., vs. JAMES C. CLOYD, } *Appeal from Circuit Court, U. S., for Southern District of Illinois.*

AND CASES CONSOLIDATED THEREWITH.

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The statement by appellees, as made on this motion, being imperfect, and the record voluminous, the appellants make this a further

statement, that the Court may determine the issue and matter in dispute, submitting that the principle laid down by the authorities cited by appellees, where each appellant in severalty has not $5.000 as the matter in dispute does not obtain in this cause.

And to that end a more full statement is here made referring to the pages of the record.

STATEMENT.

The action instituted by appellees is an original suit. Calling it a supplemental bill to the original suit, Kennicott et al. v. Wayne County, 16 Wall, page 452, alleging as the base and equity of the cause of action, that they are purchasers of purchasers, deraigning title through the foreclosure of the so-called mortgage in the above suit to a part of said lands, describing in their bills of complaint about 60,000 out of 100,000 acres of land described, to secure the payment of $800,000 of the bonds of the Mt. Vernon Railroad Company, said to be foreclosed in *case cited*, decree 1874, with sale September 18th, 1877. Appellees acquired their title through *mesne* conveyance mostly in 1884 and 1885, alleging that appellants had purchased the said lands of Wayne county, and, were in possession long before any suit was commenced, and were not parties to the said foreclosure, nor bound by the evidence or decree therein had, and that the Supreme Court of the State of Illinois in a test case to set aside their grantor's title as a cloud, before these proceedings had been commenced, (see Scates v. King, 110 Ill., 456) had set aside, annulled and decreed as null and void, their grantor's title, and found as a fact that all lands had been sold before any suit had been commenced to bind any but the county of Wayne alone.

ABSTRACT OF APPELLEES.

ALLEGATIONS IN BILLS OF COMPLAINT WITH ISSUE MADE.

The facts as alleged by appellees (and admitted by appellants,

except appellants deny the validity of the so-called mortgage, and and assert adverse title thereto with bar of the statute of limitation, and that complainants have no standing in Court) are as follows: J. C. Cloyd, T. C. Austin and J. B. Cornell, on the 20th of January, 1882, filed their bills of complaint by Edwin Beecher, their attorney, against Clarissa Jordan, Michael Book, T. J. Pettijohn and other of these defendants, setting up two instruments pretending to be the deed and mortgage, executed by Wayne County, on the 25th of April, 1859, which recited, that it is to the use of the Mount Vernon Railroad Company to secure the payment of $800,000 of the bonds to be issued by the Mount Vernon Railroad Company, dated April 20th, 1859, payable in fifteen years, with interest coupons payable semi-annually, at seven per cent., alleging default of all interest and principle. That all by the terms of the said so-called mortgage wherein it recited, "and this indenture further witnesseth that the said parties of the first part, for themselves, and their successors do covenant and agree that if default shall be made in the payment of the interest upon the said construction bonds or obligations, so that a sum equal to one year's interest of the whole amount of the said construction bonds or obligations already issued and secured by these presents, or that if default shall be made in the payment of the principal of the said construction bonds or obligations, that then, and from thenceforth, it shall and may be lawful for the said parties of the second part to enter into and upon, and take possession of all and singular, the lands and all the premises included, or intended to be included, in this mortgage."

That said deed and mortgage described 100,000 acres of the swamp lands of Wayne County. That the Mount Vernon Railroad Company executed on the same date a mortgage on all of their

property acquired, or to be acquired, with their franchise to secure the payment of the same issue of bonds.

They allege that proceedings of foreclosure had before this been had as appears of record and reported in 16 Wall page 452, to foreclose mortgage of the Mount Vernon Railroad Company, and the said deed and mortgage of Wayne County, that these appellees have acquired title by deed deraigned from the sale.

That the said proceedings was commenced March 5th, 1865' summons served on County of Wayne May 11th, 1865, Mount Vernon Railroad Company entering their appearance. Complainants therein alleged Isaac Seymour, the trustee, was dead, and prayed the appointment of one to execute the trust, alleging default of all interest, which caused proceeded to a decree, after several amendments, against the Mount Vernon Railroad Company, June term, 1868, with sale August, 1868, of all property, or rights of property, with its franchise. The Mount Vernon Railroad Company, the defendants therein, being the purchasers. Sale confirmed and deed given September 5th, 1869. See page record (Ex. H) page 639.

Then by amended bill filed January 17th, 1870, with forty new complainants, for the first time proceeded against the county alone, and for the first time setting up for the base of power and consideration, to make a joinder connection and intersection under section 10 charter Mount Vernon Railroad Company, and for the execution of the so-called mortgage, the assignment and the fulfillment of a certain contract with Vanduser, Smith & Co. made with Wayne county, dated November 19th, 1858. See page 522 on which a decree was had June 1874, (case reported, 16 Wall, Kennicott v. County of Wayne 467), sale September 18th, 1877; confirmed September, 1878; deeds by Master-in-Chancery May 31st, 1879.

That complainants therein bid it off at three times its assessed

value, and divided it by meets and bounds to represent each one's interest.

That the now appellees, J. C. Cloyd, J. B. Cornell, Elizabeth H. Taylor, Lucinda A. Walker, F. B. Hane, (whose causes are consolidated as herein stated) were not parties to the said suit of foreclosure, nor did they hold any bonds, obligations, or interest coupons, nor were they purchasers at the sale, nor had they any interest therein but deraigned title therefrom at subsequent dates by being purchasers of some one who purchased through parties at the Master's sale.

The complainants then allege that these defendants, now appellants, were not parties to the said foreclosure suit, nor had they been foreclosed, that they had purchased the lands of the county of Wayne, and were in possession long before any suit to foreclose the said mortgage was commenced, without being made parties thereto.

That the county of Wayne had sold and given possession of all lands described in the said mortgage on or before October 13th, 1868, before the amended bill of Jan. 17th, 1870, was filed. See page 14 to 82.

On these statements of facts the appellees, J. C. Cloyd, T. C. Austin and J. B. Cornell, pray that they may be subrogated to the rights of the original parties by a supplemental bill in (Kennicott et al. v. The County of Wayne, 16 Wall, 467) to the amount of the bid made at the sale, as agreed upon by the purchasers September 18th, 1877, on each tract of land as now claimed to be held by these appellees, through their chain of title, and that the said decree had in *Kennicott suit* may be enforced by a reforeclosure of the so-called mortgage of the respective tracts of land against each of these

defendants [redacted] severally, to the amount of the agreed bid at the sale. See page 14 to 27.

That the other causes consolidated herewith were commenced as follows: On the 20th of January, 1882, Elizabeth H. Taylor, and heirs of M. Alexander, surviving executor of Peter McMartin, Wm Ralston, Joseph Waxelbaum, Chas. Coe, J. Sargent Smith, Arthur F. Gould, instituted in one complaint a like proceeding against J. B. Bozorth and among others, these appellants describing other lands. setting up the same cause of action with the same prayer, whereupon the same were consolidated as before stated. See page 90 to 106.

That on the 6th of October, 1884, F. B. Hane by Walter B. Scates, as an attorney, instituted suit of like character intervening in the above consolidated causes against divers of these defendants, alleging that he had purchased his interest by quit-claim of Walter B. Scates on the 4th of April, 1884, setting up the same facts as had J. C. Cloyd, and adding an allegation to sustain a prayer for an injunction that a hundred and more suits had been instituted in the State Court to set aside his grantor's title, and prayed an injunction to stay further proceedings of suits in the State Courts of Illinois, alleging "That the Supreme Court of the State of Iliinois in a test case, *Scates v. King*, 110 Ill., page 456, had decreed and set aside, cancelled and rendered null and void his grantor's (Walter B. Scates') title in suit, by some of these appellants, in an action to remove cloud from title against his grantor before he purchased. Therefore he prayed an injunction to stay, to stop. and anull, any further proceedings in the State Courts," until the mortgage, so-called, might be foreclosed in this Court. See page 117 to 133.

February 13th, 1885, Lucinda A. Walker, by H. C. Whitney, her attorney, filed like petition with like allegation as that of J. C.

Cloyd et al. and of F. B. Hane, alleging quit claim as her interest and title, from H. C. Whitney and Elizabeth H. Taylor, March 4th, 1884, and adding further to sustain the prayer for an injunction against proceedings in the State Courts as follows: "That on a square issue made in case of J. B. Scudamore vs. H C. Whitney (her grantor,) the State Court held and adjudged that the said suit Kennicott et al. vs. the County of Wayne to foreclose the said trust deed and mortgage, was not commenced in this Court, until the, amended bill filed, January 17th, 1870, so as to bind any except the County of Wayne alone. That it will decide the same in all cases if suffered to proceed, and will totally annul and absolutely destroy H. C. Whitney's and Elizabeth H. Taylor's title (her grantor's,) to all lands as the County of Wayne had sold and deeded away, all before that date." See page 305 to 306.

That on the 13th of March, 1885, J. C. Cloyd filed another bill of complaint, intervening in the consolidated cases, alleging the same facts as in the original bill, and in addition thereto the further allegation as made for an injunction as prayed in complaint of F. B. Hane and Lucinda A. Walker, alleging purchase of his further interest and title of Walter B. Scates, after the Supreme Court of Illinois had decreed it null and void, which injunction as above prayed was granted, but on motion before Hon W. Q. Gresham, was dissolved on the 16th of May, 1885. See page 297 to 317.

To these consolidated causes appellants demurred to complainants' bills, assigning special causes, see page 84, which on being overruled they made joint answers, denied being parties or privies to the said foreclosure suit, pleading the decrees had as alleged in the Supreme Court of the State of Illinois, and suits pending before this proceeding was commenced and set up and have proved the following as being the facts, and when compared with the proof in

the case of Kennicott et al. vs. the County of Wayne, 16 wall 452, and now in this record is as follows:

COMPARATIVE PROOF.

In that case: The appellee seems to have proved that the County of Wayne held an election expressly, November, 1858, to, and did vote the lands in aid of the Mount Vernon Railroad Company. See 16 Wall page 467.

In the case at bar: We show that no such election was held, that the only election had was had November 5th, 1855, reading as follows:

"For donating the swamp land of Wayne county as a bonus to any company for building a railroad through Wayne county."

In that case: Appellant proved record of County Court with *placita* of special term April 20th, 1859, to execute the pretended deed and mortgage.

In the case at bar: We prove record with no *placita* nor call for special term, and that two only of the three judges were present, without notice to the third, and that it was not done at the Court House, but away from the Court House on the out edge of the town; that a special term of the Court was never called or held as pretended. Record evidence and J. E. Wilson, clerk, page 568 to 596.

In that case: It appears that the Mount Vernon Railroad Company had completed the larger portion of its railroad in Wayne county under the contract of Vanduser, Smith & Co. 467.

In the case at bar: We prove nothing was done, and that the Mount Vernon Railroad Company abandoned all without a commencement, in the fall 1860, and that the County of Wayne had declared the contract of Vanduser, Smith & Co., and all proceedings forfeited, and proceeded and did sell all lands, free from any

contract or lien without intermission. See S. J. R. Wilson's evidence page 571, 594. Ex. G. I. and M. 635, 644, 656.

In that case: It seems a plat and survey of the line of the railroad was made under the contract of Vanduser, Smith & Co.

In the case at bar: We show, they agreed to file plat in 1860 or forfeit all. We show further, none was filed but totally abandoned. See Ex. G and S. J. R. Wilson's evidence.

In that case: They seem to have shown that a joinder connection and intersection was had so as to be brought within the provision of section 10 of the charter of the Mount Vernon Railroad Company, by acquiring the contract of Vanduser, Smith & Co., and by work done thereunder, and on that they solely relied to show power and consideration for the acts of the County of Wayne to execute a mortgage to the Mount Vernon Railroad Company. See 16 wall 467.

In the case at bar: We show that no consideration was paid; that no work was done under said contract; that all parties submitted to its forfeiture in 1860 as of its date; that no power existed either with or without its fulfillment, for the county to have mortgaged its lands to the use of the Mt. Vernon Railroad Company. See S. J. R. Wilson's evidence. Ex. "G" and I 635, 644.

In that case: They seemed to have proved that the county of Wayne had issued $400,000, of bonds, secured by the land, and that the county sold the bonds. See 16 Wall, page 468 and 467.

In the case at bar: We show that the county issued no bonds, nor did they hold, or agree to hold, no did they sell any of the bonds of the Mt. Vernon Railroad Company. See Wilson's evidence.

In that case: They seem to have shown that the deed to Chas. Wood in trust to the use of the Belleville and Fairfield Railroad or any other railroad that would build a railroad through Wayne

county, was in force and that it recited a connection with the Mt. Vernon Railroad. See 16 Wall 468.

In the case at bar: We show that the Mt. Vernon Railroad Co. is not known in the deed by any recital. Besides, the conditions were forfeited, and the lands were reconveyed back to the county by the terms and condition of the deed, August 20th, 1857. See page 567 to 595.

In that case: It nowhere appeared that the county had declared the contract of Vanduser, Smith & Co. forfeited by its own terms, and had proceeded in 1862 by order of Court, to sell all the lands, in the same manner as was done before the execution of the said contracts, deed and mortgage, and free from lien, and had done so.

In the case at bar: We show a right to declare the forfeiture and that it was done by order of the County Court and put upon record December, 1862, and that every tract was sold, the last on October 13th, 1868, by deed reciting that the county "granted an indefeasible title in fee simple. See J. C. Alexander's evidence, page 565 and Ex. M. page 656.

In that case: It nowhere appeared that these lands were occupied and held adverse thereto under a legal power of the county to convey the lands.

In the case at bar: We show no power existed to aid the Mt. Vernon Railroad Company under the pretended mortgage, but that all had been sold under a legal power to appellants. See Ex. G. and I, page 591, 593 and Ex. M. page 655. See case, Scates v. King 110 Ill. 456, same being proved in this case.

After the above issue was joined and evidence taken appellants filed an affidavit, setting up and alleging on information and belief that the deeds of conveyance, pretending to convey title by H. C.

Whitney, Walter B. Scates and Elizabeth H. Taylor to F. B. Hane, Lucinda A. Walker and J. C. Cloyd, non-residents of the State of Illinois, was a fraudulent conveyance, without consideration, to oust the jurisdiction of the State Court, and thus fraudulently give the Circuit Court U. S. jurisdiction against which allegation and charge no proof was made. *See page* 419 *Record.*

DEFENSE OF APPELLANTS.

The defense of the appellants is shown by the above facts as set up in the answer and proved to be a denial of the existence of any valid deed or mortgage, with a declaration of adverse holding, December, 1862, by order of County Court to proceed and sell all lands. That no consideration was paid, but abandoned.

That the county of Wayne had no power to enter into, nor enforce any contract with the Mt. Vernon Railroad Company to construct a railroad in Wayne county, neither had the Mt. Vernon Railroad Company any power to construct, or enforce any contract with Wayne county to aid said road. That two of the judges out of any term of Court, or, order of Court, without notice to the third could not execute a valid mortgage. That the appellants purchased, free from any lien of the so-called mortgage. That the contract by assignment to the Mt. Vernon Railroad Company, of Vanduser, Smith & Co., being set up for the first time in the amended bill filed January 17th, 1870, with its fulfillment, was the only base of power and consideration on which the recovery was had.

That the time in which the contract of Vanduser, Smith & Co., was to be commenced and to be completed, was made the essence of the contract, otherwise it was forfeited, and rendered void on such failure, and that the selling of all the lands to divers hundreds of persons, giving possession, open and notoriously, and listing lands for taxation, was a declaration of forfeiture and of adverse holding.

That appellees are barred, by the statute of limitation. None of these facts as stated were proved in the original suit of foreclosure.

It was after the above defense had been fully sustained by the Supreme Court of the State of Illinois, *Scates v. King, supra*, being made the test by agreement in hundreds of cases then pending against these appellees' grantors, that this proceeding was instituted by the appellees. Special reference is made to the case of *Scates v. King, supra*, for a statement of facts proved, and issue on the merits in that and the cause.

DECREE.

With these facts and issue, the Court, in the case at bar rendered the decree as prayed. That these appellants be decreed to pay the sum for which the respective tracts were bid off by agreement, at the said void foreclosure sale, in the case of Kennicott et al. vs. County of Wayne, September 18th, 1877, and if not paid, to be foreclosed for the amount set opposite each tract, and for the benefit of the respective appellees in severalty as follows:

Appellees vs Appellants,	Sub Dv		Sec	Town	Range	Amt to R'deem
L A Walker vs A Winter.....	ne	se	9	3s	7e	$ 240
J C Cloyd vs J D White.....	nw	nw	11	2s	6e	240
J C Cloyd vs J Mannahan.....	sw	nw	11	2s	6e	240
J C Cloyd vs Wm Shæffer.....	ne	ne	10	3s	7e	240
J C Cloyd vs Elizabeth Sparks...	w½	se	nw	29	2n	9e	120
J C Cloyd vs Thomas Bain.....	sw	sw	11	2s	6e	240
J C Cloyd vs H T Garrison.....	nw	nw	9	1s	5e	480
Alleged and decree pleaded; had in State Court.						
J C Cloyd vs Sam Garrison.....	sw	sw	9	1s	5e	240
C T Austin vs Michael Book.....	se	se	11	2s	6e	240
H M Alexander vs Michael Book.	ne	ne	14	2s	6e	240
Chas A Coe vs John Johnson.....	sw	se	9	3s	9e	240
J B Cornell vs Andrew Martin...	ne	se	4	1s	5e	240
J B Cornell vs G C Garrod.....	w½	sw	31	1s	5e	480

Appellees vs Appellants.	Sub Dv		Sec	Town	Range	Amt to R'deem
F B Hane vs H Tucker	sw	nw	12	3s	7e	240
L A Walker vs H Tucker	n½	se	12	3s	7e	480
Alleged and decree pleaded; had in State Court.						
F B Hane vs H Tucker	w½	nw	7	3s	7e	2800
Decree had in State Court.						
H M Alexander vs Eliz. Smook	se	ne	14	2s	6e	240
L A Walker vs John Bain	ne	se	10	2s	6e	440
L A Walker vs Sarah St Ledger	ne	se	34	1s	9e	240
Suit in State Court.						
Chas A Coe vs Levina Sumter	w½	nw	5	1s	8e	320
F B Hane vs Levina Sumter	nw	sw	5	1s	8e	160
J Sargent Smith vs Wm Campton	sw	sw	14	1n	9e	260
E H Taylor vs J W Atkinson	ne	ne	13	2s	6e	240
J B Cornell vs N N Borah	ne	se	22	2s	6e	240
J B Cornell vs N N Borah	se	se	22	2s	6e	240
J B Cornell vs N N Borah	w½	sw	23	2s	6e	480
J C Cloyd vs E T Hall		sw	10	3s	7e	640
J C Cloyd vs E T Hall	e½	nw	10	3s	7e	320
Disclaims.						
J C Cloyd vs E T Hall	w½	ne	10	3s	7e	320
E H Taylor vs E T Hall	w½	se	3	3s	7e	360
C T Austin vs D L McCawley		sw	10	3s	9e	960
J B Cornell vs D L McCawley	sw	sw	1	3s	9e	240
F B Hane vs R H Puckett	ne	nw	6	3s	8e	560
Alleged and decree pleaded; had in State Court.						
F B Hane vs John Wagner	se	sw	30	2s	9e	480
F B Hane vs Thos Beyhymer	nw	nw	17	3s	8e	400
F B Hane vs John Murphy	w½	ne	2	3s	7e	480
L A Walker vs Joseph Palmer	w½	se	7	3s	8e	400
F B Hane vs John K Palmer	ne	sw	7	3s	8e	989
J B Cornell vs P R King	ne	nw	9	2s	9e	360
J B Cornell vs Margret Sparks	w½ ne	sw	29	2n	9e	360
Not swamp land.						
J B Cornell vs Susan Pharr	ne	nw	10	1n	9e	240
A F Gould vs A Bleakley	sw	sw	26	1n	9e	240
F B Hane vs A Wall	sw	ne	21	1s	9e	320
Alleged by complainants; suit pending in State Court.						
Eliz. H Taylor vs M Dalton	se	ne	35	1s	5e	360

Appellees vs Appellants,	Sub Dv		Sec	Town	Range	Amt to R'deem
J B Cornell vs James McClurg	se	ne	30	2n	9e	240
J B Cornell vs Cline & Beard	ne	ne	30	2n	9e	240
J C Cloyd vs Elizabeth Slover	w½	sw se	11	1s	5e	120
F B Hane vs Wm Robinson	w½	ne nw	8	1s	8e	200
J B Cornell vs J C Williams	nw	se	19	2n	9e	240
J B Cornell vs J C Williams	se	se	19	2n	9e	240
F B Hane vs George Draper	sw	se	4	3s	6e	200
Alleged by complainants; suit pending in State Court.						
J B Cornell vs H Tompkins	ne	se	26	1s	5e	240
J B Cornell vs H Tompkins	n½	se se	26	1s	5e	120
L A Walker vs Wm Garrison	nw	se	19	2s	6e	240
J C Cloyd vs W J & J Osterman	nw	se	2	2n	9e	400
J B Cornell vs Wm H Dobbs	se	sw	23	1n	9e	240
Disclaimed.						
F B Hane vs Wm Atteberry	ne	nw	17	3s	8e	400
F B Hane vs M M Wheeler	sw	ne	27	2s	6e	160
Decree pleaded; had in State Court.						
F B Hane vs Malinda Sanders	se	sw	11	2s	5e	320
Decree pleaded; had in State Court.						
F B Hane vs Malinda Sanders	se	sw	11	2s	5e	320
Decree pleaded; had in State Court.						
F B Hane vs Henry Kincart	sw	nw	17	3s	8e	400
Decree pleaded; had in State Court.						
F B Hane vs Wm Maberry	nw	se	4	3s	6e	240
Decree pleaded; had in State Court.						
E H Taylor vs L J Rider	n½	ne	36	2s	6e	320
Disclaims.						
F B Hane vs L J Rider	nw	se	4	3s	7e	160
F B Hane vs L J Rider	sw	se	4	3s	7e	160
L A Walker vs Wm Shæffer	e½	se	3	3s	7e	480
F B Hane vs John Johnson	n½	ne	18	3s	9e	480
F B Hane vs John Haffel	ne	sw	8	3s	9e	400
L A Walker vs D L McCawley		ne	12	3s	9e	640
Disclaimed.						
L A Walker vs D L McCawley	sw	nw	12	3s	9e	320
Disclaimed.						
L A Walker vs D L McCawley	n½	sw	12	3s	9e	320
Disclaimed.						

Appellees vs Appellants,	Sub Dv	Sec	Town	Range	Amt to R'deem
F B Hane vs Wm N Borah.....	ne sw	24	1s	8e	400
Alleged and pleaded; decree in State Court.					
T B Hane vs D L McCawley.....	ne	11	3s	9e	320
Disclaim; n½ ne.					
L A Walker vs D L McCawley....	n½ nw	12	3s	9e	320
Disclaim.					
L A Walker vs D L McCawley....	se nw	12	3s	9e	160
Disclaim.					
E H Taylor vs J B Bozarth.....	nw nw	22	1s	5e	240
Decree admitted in State Court and party dismissed by H. C. Whitney.					
F B Hane vs V C Borah.....	nw sw	13	1s	8e	560
Decree admitted in State Court.					

BRIEF.

From the record and issue, the following points are suggested as being conclusive against the motion to dismiss the appeal:

It is an attempt by supplemental bill to reopen for a part of the subject matter of an original suit of foreclosure,—decree 1874,—sale 1877, Master's deed 1878, based on a deraignment of title therefrom, by and against new parties, alleging over $1,000,000 as the matter in dispute and that appellants were not and should have been parties to the original suit, a matter of fact in existence, open and notoriously known before the original suit was brought.

2nd. It is an attempt without any note, bond, obligation, contract, or equity existing, to foreclose a so-called mortgage for the third time. ***First***, by decree June term, 1868, against the Mt. Vernon Railroad Company, impleading the county of Wayne by Kennicott et al., *supra*, for over $100,000, with decree June term, 1868. sale of all property, August, 1868, (***See Ex. "H" Record*** 689) sale to the Mt. Vernon Railroad Company, deed given 1869. ***Second***, by

amended bill setting up a new base for consideration and power January 17th, 1870, filed in same cause against the county of Wayne alone, decree 1877, sale 1878, deeds 1879, and now by this proceedings, based on the equity of deeds of conveyance deraigned therefrom, describing 100,000 acres in parcels of 40 acres, as appellees may select in severalty, claiming, praying and having decreed, arbitrarily, the amount to redeem each 40 acre tract from the respective appellees, otherwise to be sold for that amount. In every instance in value less than $500.

3rd. No appellees has alleged, claimed, or had decreed to him and against each appellant $500 as the value of the matter in dispute.

4th. The graveman of the action and the decree is to enjoin, annull, ignore and render void, proceedings of the Courts of the State of Illinois. *Test case, Scates v. King, supra,* had before this proceeding was commmenced.

5th. The proceeding is in violation of Sec. 723 R. S. U. S.

6th. The Circuit Court had no jurisdiction.

An appeal lies in this case as the jurisdiction of the Court below is a proper one for review.

"The limited jurisdiction of the Circuit Court is always a subject of inquiry in this Court when the record shows the want of it." Dred Scott v. F. A. Sanford, 19 Howard 393.

If the action of appellees could be sustained in severalty, as an equitable action, the Circuit Court had no jurisdiction, as no complaint, alleged, claimed, or proved, the amount of value as the matter in dispute to be of the value of $500 as against any defendant.

"Jurisdictional fact may be looked into from the whole record." Gregnon v. Astor, 2 Howard 319.

"Parties cannot join to give jurisdiction."

—Oliver v. Alexander, 6 Peters 143.

—Spear v. Place, 11 Howard 522.

"Each complainant must be able to sue each defendant."

—Rich v. Lambert, 12 Howard 347.

—Strawbridge v. Carter, 3 Cranch 257.

—Corporation New Orleans, 1 Wheat 91.

—Paving Co. v. Mulford, 100 U. S. 147.

"If record shows Circuit Court had no jurisdiction, the Supreme Court will not award *venira facias de nove* but will dismiss the suit."

—Brighton v. Cabot, 3 Dall 19.

—McCormick v. Sullivan, 11 Wheat 191.

"Appearance cannot enlarge the power of the Court nor prevent motion to dismiss the suit for jurisdiction."

—United States v. Yeats, 6 Howard 605.

"The plaintiff may assign error of jurisdiction of Court in the suit instituted by him, and he may take advantage of the error."

—Capron v. VanNoordran, 2 Cranch 126.

"It is a peculiar principle, rather than an exception to it, that an Appellate Court before whom a cause is brought of which the Court below had no jurisdiction may take jurisdiction, and will do so, as far as to annull and reverse the proceedings below."

—United States v. Nourse, 6 Peters 470, 495.

"Suits in equity shall not be entertained in either of the Courts of the United States in any cause where a plain, adequate remedy at law may be had."

—Revised Statutes U. S., Section 723.

Two district Judges cannot hold a Circuit Court, nor a district Judge be detailed to sit as a Circuit Judge, except to fill or supply a vacancy.

—Revised Statutes, Sec. 592, 596, 609.

A fraudulent transfer of title will not give the United States Court jurisdiction. (See affidavit page 419 of Record.)

This stands uncontradicted.

2. An appeal lies in the case at bar, as the graveman of appellees action is to enjoin the Supreme Court of the State of Illinois of further proceedings, as alleged by appellees in case *Scates v. King supra*, until the appellees can foreclose in this Court the 100,000 acres, or so much as each appellee may desire.

If the action is to foreclose, then it is in *solido* for the whole debt.

"Matter in dispute is meant the subject of litigation. The matter for which suit is brought, and on which issue is joined. The matter in dispute is the debt claimed, not the damages or prayer for judgment.

—Rich v. Lambert, 12 Howard 352.

—Lee v. Watson, 1 Wall 337.

—Wilson v. Daniels, 3 Dall 401, 408.

"Purchasers of the equity of redemption, to redeem must pay the whole debt." There can be no severance until the debt is paid, or foreclosed, under a legal proceeding.

—Jones on Mortgages, Sec. 1063, 1070, 1075.

—Powell on Mortgages, 342.

—Bradley v. Snyder, 14 Ill. 263.

—Meacham v. Hale, 93 Ill. 141.

Equity of redemption, under the statute, is a privilege to be exercised within a limited time. The case at bar seeks, by supplemental proceedings, to compel a redemption, against parties who have not been foreclosed, by subrogation to the rights of the origi-

nal parties, claiming an equity by the deraignment of title, under a void foreclosure.

A supplemental bill, to a foreclosure, suit alleging the equity of deeds by deraignment through purchase at Master's sale, praying to be subrogated and have a foreclosure against parties in possession by purchase of the so-called mortgagor, before the foreclosure suit was commenced, opens up the whole case, and all previous decrees, and orders, are vacated, that the original suit may be heard at the same time, and all parties must be brought in.

—Gibson v. Ross, 50 Ill. 385.

—3 Daniel ch pr 180.

—2 Barth ch pr 69.

—Storey's Eqt. Pld., Section 332, 335. 338, 352.

ACTION BARRED BY STATUTE OF LIMITATION

"Until parties are made defendants in suit, though actually begun as against others, is not *lis pendens*, until brought in."

—Dumphy v. Riddle, 86 Ill. 22.

—Miller v. McIntyre, 6 Peters 61.

—Freeman on Judgments, Sec. 199.

—Story Eqt. Plead., Sec. 904.

ARGUMENT.

Appellees set up no value, as the matter in dispute; except it is in solido, to foreclose a mortgage describing 100,000 acres of land, to secure the payment of $800,000, &c; or, on their acquired title, by deed, of forty acre tracts, deraigned from purchasers at a sale under a void decree of foreclosure, September 18th, 1877, value fixed by an agreed bid of three times the appraised value. These are the only allegations, or proof of value.

Appellees have neither bond, note, obligation, or contract, on which they predicate their action, or the amount in value of the matter in dispute, but rely alone, on the amount of the bid agreed upon, for which the lands were bid off at, by the complainants in the said foreclosure suit, *Kennicott et. al. v. County of Wayne.* In this view, it follows that each appellees action is based on his deed, against each defendant in severalty, to compel a redemption for each separate tract, not to exceed the amount named, while the value of the matter in dispute would be, by inference of appraised value, but one-third of that sum.

If the appellees could unite three or more appellants to give the Circuit Court jurisdiction, all may be joined to give Appellate Court jurisdiction.

It will be observed by the demand of appellees' prayer and decree (see page this brief —) that no appellee has set up and proved enough in amount as the value of the matter in dispute to give the Circuit Court jurisdiction against any appellant.

"Each complainant must be able to sue each defendant."

Appellees say, "Each defendant may exonerate himself, by paying the amount decreed for a redemption."

This might be true as against these appellees as they would be estopped, but it would not be so as against other parties, who are not parties to this proceedings, and who hold deeds of the same tenor and equity.

The foreclosure of a mortgage is an action *in solido* while each tract is liable for the whole debt.

NOT AN EQUITABLE ACTION.

(Sec. 723, R. S. U. S.)

The only fact set up on which appellees base an equitable action is that they have acquired a deed to divers tracts of land, de-

scribed in this proceeding of about 60.000 acres, making and naming some 300 or more parties defendants but bring only into court about 60, by service of summons or appearance, describing 3,320 acres out of the 100,000 acres described in the so-called mortgage, setting up title deraigned from a void decree, dating after the Supreme Court of Illinois in a test case, *Scates v. King, supra,* in a proceeding to remove cloud from title against their grantors, decreed their grantors title null and void and would do so in every instance if suffered to proceed, as the county of Wayne had sold all lands before any suit had commenced to bind any except the County of Wayne alone. *See appellees aliegation, page* 305 *and* 306 *of record.*

The rule *caveat emptor applies.*

Appellees by their deeds get the titles of their grantor; if, the grantor had no title, they must abide by it.

FULL FAITH AND CREDIT IS NOT GIVEN TO THE JUDICIAL DECISIONS OF THE COURTS OF THE STATE OF ILLINOIS.

The State Court had jurisdiction of the parties, and the subject matter, and had found as a fact, that the County of Wayne had sold the fee, free from any lien of the so-called mortgage, before any suit was commenced to foreclose, or bind any except the County of Wayne.

The State Court also found and decreed from the facts proved, that the so-called mortgage and deeds acquired by and through the foreclosure sale were null and void.

In the face of the allegations of appellees and pleas of appellants, of suits pending and decrees plead, in bar, with answers and disclaimers, the decree in this cause, ignored the entire defense and decreed in severalty, each tract to be sold for the amount of the bid

made at the sale September 18th, 1877, *supra*, unless redeemed by appellant.

We submit that the above rules should be applied in this cause, and the suit be dismissed.

CONCLUSION.

The authorities cited by appellees, on which to base the motion to dismiss this appeal, do not obtain in this case. In every instance they were actions in severalty, which might be joined for convenience against a common undivided fund, and where each complainant's amount of value, as the matter in dispute and against each defendant, exceeded $500.

This is an original suit attempting to foreclose the so-called mortgage for the third time, as appears by the record, without making anyone parties, heretofore parties, admitting that no foreclosure had been had, against these appellants and others in possession of all lands, open and notorious, by deed, before any proceeding was had in the former attempt to foreclose. On these facts, we submit that by no rule of equity, can this action be sustained by supplemental bill against these appellants. If so, it is in solido, the foreclosure of the mortgage, and must be heard on the merits. But, inasmuch, as appellees allegations fix, without proof, the amount for redemption, at less than $500, in favor of each appellee, and against each appellant, an action in severalty, the Circuit Court had no jurisdiction, and the suit should be dismissed.

The State Court having jurisdiction to remove cloud from title, and appelles grantors being parties thereto, before the case at bar was commenced, appellees are bound by the decision and decree had in case Scates v. King, 110 Ill. 456, and the case should be dismissed.

By the placita, it will appear that the Circuit Court was held

by two District Judges. Hon. H. W. Blodgett being detailed to sit and assist Hon. S. J. Treat, in holding the Circuit Court. We submit that this is unwarranted by the laws organizing the Circuit Court of the United States. R. S. Sec. 592, 596, 609. While it was unfair to parties, as there was no ranking judge, and no incentive could be held out, for a finding of the facts, that a certificate of division might have been had. The cause was set to be held by a full Court.

This cause, involving the title to so large a body of land, held by open and notorious possession, for over twenty years, by appellants, and now under an apparent conflict of decision between the State and United States Court, (but not on the same evidence,) we submit that the importance of the matter in issue deserves more than a casual examination of the record, as must be done on motion to dismiss the appeal.

Calling the Court's attention to the numerous errors, as assigned on the record, we submit that the motion to dismiss the appeal should be denied, and that the suit should be dismissed. All of which is respectfully submitted.

H. TOMPKINS,
JAMES McCARTNEY,
T. J. GOLDEN,
Attorney for Appellants.

Office Supreme Court, U. S.
FILED.
NOV 26 1889
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1889.

No. 147.

M. M. WHEELER, N. N. BORAH, A. WINTERS, WILLIAM R. COX, ET AL., APPELLANTS,

vs.

JAMES C. CLOYD, ELIZABETH H. TAYLOR, LUCINDA A. WALKER, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT, SOUTHERN DISTRICT OF ILLINOIS.

MOTION TO DISMISS APPEAL.

BRIEF OF APPELLEES ON MOTION TO DISMISS APPEAL.

A brief statement of the case will show the propriety of our motion to dismiss appeal.

On April 20, 1859, Wayne county, Illinois, executed a mortgage on certain swamp lands owned by the county. On March 7, 1865, a bill was filed in the United States circuit court at Springfield, Illinois, to foreclose that mortgage. Between the date of the mortgage and filing the bill to fore-

close the county had sold part of the lands included in the mortgage, and the grantees of such lands were not made parties to the suit to foreclose. A decree of foreclosure and sale was rendered by the court (see Kennicott *vs.* The Supervisors, 16 Wal., 452, and Supervisors *vs.* Kennicott, 94 U. S. Rep., 498), and under that decree a sale of all the lands included in the mortgage was made. Concluding the equity of redemption of such grantees was not foreclosed, the present bill was filed against all such grantees or others holding under them, and who were not made parties to the first suit (see page 6 of printed record of present case). In this bill complainants set forth how much each tract sold for at the master's sale, and who was then the holder or claimant under the sale made by the county, and such claimant was made a defendant therein.

The circuit court found for complainants and decreed that each defendant should, within fifteen months from the date of the decree, redeem the land so claimed by him by paying the amount for which such tract sold, or, in default of so doing, his equity of redemption in and to such tract should be forever foreclosed. There was no decree that he should pay any part of the unpaid balance of the mortgage, or that any defendant should be liable for anything more than the land claimed by him. From that decree part only of the defendants appealed, some refusing to join in the appeal. (See pages 341 and 347 of printed record.)

In no instance was the amount for which the land of any defendant sold as much as five thousand dollars.

Appellees, in support of their motion, claim that no one of appellants is interested to an amount sufficient to give this Court jurisdiction. Appellants claim they can consoli-

date the several amounts awarded against all the defendants, and thereby give the Court jurisdiction.

That the decree is not a joint decree will be readily seen by an examination of the record. (See page 333 of printed record.) That decree reads: "That each of said owners of the said equity of redemption, * * * each acting for himself or herself and not for any other, may and shall redeem," &c.

Under this decree any one defendant could relieve himself from further liability by paying the amount for which the land claimed by him was sold. If every other defendant failed to comply with the terms of the decree such failure could not affect him. His liability could not be increased by the failure to redeem of his codefendants.

One suggestion would seem to be conclusive: Suppose only one of the numerous defendants attempted to appeal, and the amount such defendant was decreed to pay was one thousand dollars, would this Court listen to an argument in support of such appeal?

But the question has been so often before this Court that argument is unnecessary. We only refer to a few of the numerous cases heretofore passed on by the Court.

Ex Parte Phœnix Ins. Co., 117 U. S. Rep., 367, and authorities cited by Chief Justice Waite.

In the late case of Gibson *vs.* Shufeldt, 122 U. S. Rep., 27, a review is made of this whole subject. In closing that opinion Justice Gray said:

"This result, as we have seen, is in accordance with a long series of decisions of this Court, extending over more than half a century. During that period Congress has often legislated on the subject of our appellate jurisdiction with-

out changing the phraseology which had received judicial construction. The Court should not now unsettle a rule so long established and recognized."

The decision of the supreme court of Illinois, from which State this case comes, is in accordance with the decision of this Court.

Farwell *et al. vs.* Becker *et al.*, 21 N. E. Reports, 792 (opinion filed June 15, 1889, and not yet reported in State Reports).

From these authorities we think we are fully justified in asking that this appeal be dismissed.

LUCIEN BIRDSEYE,
Attorney for Appellees.

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Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 147.

M. M. WHEELER, N. N. BORAH, A. WINTERS, WILLIAM R. COX, *et al.*,

Appellants,

vs.

J. C. CLOYD, ELIZABETH H. TAYLOR, LUCINDA A. WALKER, *et al.*

Appellees.

Brief and Points for James C. Cloyd, John B. Cornell and others, Appellees; On Motion to Dismiss Appeal, and on the Merits.

LUCIEN BIRDSEYE,

Attorney and Of Counsel for JAMES C. CLOYD, JOHN B. CORNELL and others, *Appellees,*

No. 170 Broadway,

New York City.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 147.

M. M. WHEELER, N. N. BORAH, A. WINTERS, WILLIAM R. COX, *et al*,

Appellants:

vs.

J. C. CLOYD, ELIZABETH H. TAYLOR, LUCINDA A. WALKER, *et al*,

Appellees.

BRIEF AND POINTS for James C. Cloyd, John B. Cornell and others, Appellees; In cases as consolidated; On motion to dismiss appeal, and on the merits.

(The references are to the original or marginal pages of the Record.)

This case comes before this court on appeal from a decree rendered by the Circuit Court of the United States for the Southern District of Illinois, recovered by the appellees against the appellants, in certain consolidated cases instituted and consolidated as hereinafter set forth.

First.

The following is a concise abstract or statement of the case, presenting succinctly the questions involved, and the manner in which they are raised.

I.

Prior to April, 1859, the County of Wayne in Illinois had become the owner in fee of about 100,000 acres of land situated in that County. The title of Wayne County to such lands is conceded by all the parties to this controversy to have been good; all said parties deriving from the County their alleged titles to the lands in question herein.

II.

The Legislature of Illinois, by Act approved Feb. 15, 1855, chartered a corporation called the Mt. Vernon Railroad Company; and on the same day chartered a corporation called the Belleville and Fairfield Railroad Company. By Act passed Feby. 14, 1857, the charter of the last mentioned Company was amended, its line of road was extended, and its name was changed to the St. Louis and Louisville Railroad Company.

III.

On April 20, 1859. S. J. R. Wilson and T. M. Scott, acting as the Judges of the County Court of Wayne County, and claiming authority so to do under certain votes and proceedings of that County, executed to Isaac Seymour of New York City, a deed of trust and also a mortgage, both bearing date on that day, and which were on May 3rd, 1859, filed for record and recorded in the Office of the Clerk of the Circuit Court and *ex officio* Recorder of said Wayne County. For deed of trust and mortgage, see Record, pp. 506–536, and 537–561.

IV.

On March 7, 1865, (Seymour having previously departed this life) John W. Kenicott, and others, as Complainants, and claiming to be holders of some of the bonds secured by such deed of trust and mortgage, filed their bill in chancery in the Circuit Court of the United States for the Southern District of Illinois, against the County of Wayne and the Mt. Vernon Railroad Company as defendants, for the foreclosure of said mortgage and deed of trust. The bill so filed appears in the present Record, pp. 464–470. The bill was twice amended. The second amended bill, filed Oct. 1, 1866, appears in the present Record, pp. 470–490.

V.

The Mt. Vernon Railroad Company suffered default, and the bill was taken *pro confesso* against it on June 1, 1868; p. 639. A decree of foreclosure and sale was rendered June 18, 1868, on the Master's report, pp. 639–641, directing a sale of the railroad, with the Company's real estate, &c., &c. The Master made the sale, and reported the same to the Court; pp. 642–3. Exceptions to the report were overruled, and the report confirmed and approved, p. 641.

VI.

The County of Wayne, on Dec. 7, 1870, interposed its answer to the bill as amended; See copy in Record, pp. 491–8. Such answer in substance traversed all the allegations of the amended bill, and put complainants to proof thereof.

VII.

On Jan. 2, 1871, after a hearing upon pleadings and proofs, the Circuit Court rendered a decree, pp. 498–9, that complainant's bill be dismissed, with costs, on the ground that the proofs failed to show that at the date of the mortgage and deed of trust there was any line of railroad constructed or authorized to be constructed through Wayne County, with which the Mt. Vernon Railroad was joined, connected or intersected.

The complainants thereupon prayed an appeal to the Supreme Court of the United States.

VIII.

Such appeal was heard in this Court at the December Term, 1872, and the decree appealed from was reversed and a new trial ordered; the case being reported as Kenicott *vs.* The Supervisors of Wayne County, 16 Wall. 452.

In the statement of that case, pp. 453–462, the charters of the Mt. Vernon RR. Co. and the Belleville and Fairfield RR. Co. and the amendment thereto, and the proceedings of the County of Wayne thereunder, and the material parts of the deed of trust and mortgage are set forth with sufficient fullness, and are here referred to as a part of this statement of facts.

IX.

Further testimony was taken in the Circuit Court. After an interlocutory decree, and a reference to the Master, a final decree was rendered by the Circuit Court in June, 1874. See decree in Record, pp. 500-5. For case as reported, Kennicott *vs.* The Supervisors of Wayne County, see 6 Bissell, 138.

X.

From that decree another appeal was taken to this Court, where in Oct., 1876, it was affirmed. Supervisors *vs.* Kennicott, 94 U. S., 498.

XI.

After such affirmance, and pursuant to the provisions, pp. 503-5, of the decree of June 25, 1874, as affirmed, John A. Jones, Master in Chancery, on Sept. 18th, 1877, sold the said lands to Taylor, Glenn, Goodwin, Broadwell and Crooks, as Trustees for the parties and beneficiaries in the decree named and provided for.

XII.

The time allowed for redemption from the sale having expired, and the lands not having been redeemed, the Master, on May 27, 1879, executed and delivered to Broadwell, to whom all the certificates of purchase of the lands so sold had been transferred, a deed for the lands so sold, which sale and conveyance were reported to and approved by the Court.

The proceeds of such sale, after deducting the costs of suit and expenses of sale, only amounted to about $620,000; leaving of the principal of the decree unpaid over $500,000, and interest.

XIII.

Thereupon, through and by proper and legal conveyances made by Broadwell and his grantees, the appellee, James C. Cloyd, became the owner of the lands described in the schedule to his supplemental bill, Exhibits A and

B, pp. 25–29; the amount for which each parcel was sold by the Master being stated in the last column of Exhibit A, and none of said parcels of land bringing at the said sale more than $480.

XIV.

On Jan. 25, 1882, Mr. Cloyd filed in the U. S. Circuit Court for the Southern District of Illinois his supplemental bill in Chancery for the enforcement of the rights acquired by such sale, purchase and conveyance; joining as defendants therein Samuel Mundy and others, who were in possession of the land so owned by him by title derived under said foreclosure and sale; pp. 14–29.

XV.

On Jan'y 25, 1882, Chauncey T. Austin filed a like bill in Chancery in the same Court against Michael Book and others, with like allegations and schedules; pp, 38–50.

XVI.

On Jan. 25, 1882, John B. Cornell filed a like bill in Chancery in the same Court against Thomas J. Pettyjohn and others, with like allegations and schedules; pp. 57–75.

Edwin Beecher, of Fairfield, Ill., was solicitor for the complainants in these three cases.

XVII.

On Jan. 26, 1882, Elizabeth H. Taylor, Henry M.

Alexander, as surviving Executor, &c. and others, by H. C. Whitney, their Solicitor, filed in the same Court their bill of complaint, pp. 90–107, setting forth in substance the same allegations as in the three bills already referred to, and praying for substantially like relief: The statements of the land, however, being set forth in the bill itself, and not in schedules annexed thereto, as in the other three bills.

XVIII.

On Jan. 2, 1884, an order was made in the Circuit Court, pp. 113–4, consolidating the four cases of Cloyd, Austin, Cornell and Taylor, above referred to, and directing that they thereafter progress as one cause under the title of the first cause; and leave was given to amend the bills in all of the cases to make the same harmonious.

XIX.

On April 4, 1884, Fernando B. Hane, on petition, pp. 116–7, and order granting leave p. 114, filed his intervening petition, p. 117–143, claiming to be grantee of said Broadwell for portions of the lands so sold, and claiming in substance the same relief as in the bills to which he intervened, and additional relief by way of injunction.

XX.

To these bills and this petition, either before or after consolidation, various defendants interposed demurrers, and filed answers and pleas and answers; for which see Record, pp. 148–285.

The principal answer, pp. 265-285, sets up among other things, in substance, the same facts upon which as a cause of action the Supreme Court of Illinois, in Scates *vs.* King, 110 Ill., 458, affirmed a decree rendered in the Circuit Court of Illinois for Wayne County, setting aside a conveyance to Walter B. Scates under the foreclosure of a portion of the mortgaged lands as a cloud upon complainant's title.

Replications were filed, p. 286-8 ; 398-9.

XXI.

On leave duly granted to the various parties, amended bills or intervening petitions were filed as follows : by W. L. Rolston, pp. 289-295 ; by James C. Cloyd, pp. 297-316 ; by Lucinda A. Walker, pp. 317-388.

XXII.

Proofs having been taken by the respective parties, complainants and defendants, pp. 422-704, the case was brought to hearing on pleadings and proofs, and on Jan. 25, 1886, the decree was rendered which appears at pp. 705-726.

The facts are found at pages 710-721, as follows :

1. That on April 20, 1859, Wayne County, being the owner of the lands, &c. executed, &c. the mortgage and trust deed to Seymour.

2. That the trust deed and mortgage provided that, on default of payment of interest, the entire debt became thereby due.

3. That between April 20, 1857, (the date of the deed and mortgage), and March 11, 1865, Wayne County sold

its equity of redemption or residuary interest of, in and to sundry tracts of the same lands which had theretofore been conveyed by the mortgage and trust deed to Seymour, to sundry persons, specified in the decree.

4. That the (original) bill, (of Kennicott and others, *supra*) was filed March 7, 1865, in the U. S. Circuit Court, against Wayne County and the Mt. Vernon Railroad Company, as the only defendants thereto; that Wayne County was duly served with process and appeared in Court, new parties being made from time to time, and filed its answer, and after trial and appeal to the U. S. Supreme Court, on June 25, 1874, a decree of foreclosure was duly entered in the Circuit Court against the County, and all said lands or such parts thereof, &c. were ordered to be sold at a decretal sale by the Master in Chancery; that the decree was appealed from to the U. S. Supreme Court, and there affirmed: and the premises were sold by the Master on Sept. 18, 1887, in separate parcels, according to the legal subdivisions, and all the tracts were purchased at such sale by Goodwin and others, in separate tracts and in detail, according to the requirements of the decree; and that under the terms of sale as ordered by the decree a redemption, as provided by the statute of Illinois for judicial sales, was allowed to the County of Wayne; that none of the tracts were redeemed from said sale; and that at the expiration of the time of redemption the Master executed a deed for all of said tracts of land to Norman M. Broadwell, who was the assignee of the said certificates of purchase of the lands at such sale.

5. That none of the parties so purchasing the equity of redemption or residuary interest of Wayne County between April 20, 1859, and March 11, 1865, were made parties to the suit to foreclosure; nor did they appear in any way to the suit.

6. That on the hearing of said bill there was then due of principal and interest on the construction bonds the sum of $1,118,734.71 ; and that the lands embraced in the mortgage and trust deed were ordered to be sold, or so much as might be necessary to produce that amount : and that at such Master's sale the total amount realized was $620,160.40, leaving unpaid and unprovided for by the sale a deficit of $498,574.91.

7. There is then in the decree exhibited and shown a list or schedule of lands involved in the consolidated suit, and specified in said bills of complaint, with the names, respectively, of the several and respective persons to whom the County of Wayne sold its equity of redemption ; and, as forming part of said list and schedule, a statement of the present owners, respectively, of the title acquired by Goodwin, Taylor, Crooks, Broadwell and Glenn, and deraigned by mesne conveyances from the assignees of said parties and from said decretal sale ; and as likewise forming a part of said list and schedule a statement of the amounts which were bid respectively at the said decretal sale for said tracts of land respectively.

The schedule then sets forth the lands in question in this action, by the subdivisions, sections, townships and ranges thereof ; with the names of the purchasers from the County of Wayne of the equity of redemption, the present owners of such equity, the names of the complainants who are owners of the title to the respective tracts acquired at the decretal sale ; together with a statement, as to each of the tracts, of the amount at and for which the same was bid off at such decretal sale.

[It appears by such schedule that no one of the defendants, who is the present owner of the equity of redemption in the lands thus acquired under the decretal sale, owns lands amounting

in value to $5,000. In most cases, defendants own single 40 acre tracts; the amount of the bid upon which at the decretal sale, which fixes the amount to be paid on redemption as to the respective tracts, being from $150 to $400. The amount bid on each parcel is less than $1,000, except as to four parcels, for which the amounts bid were, respectively, $1280, $1600, $2800 and $1360.]

XXIII.

As matters of law it is then decreed:

1. That the opinions and decisions of the U. S. Supreme Court on the appeals heretofore prosecuted from the Circuit Court, and reported in 16 Wall., 452, and 94 U. S., 498, are binding on the Court, and there is nothing in the Record or evidence in the case as consolidated to invalidate the mortgage and deed of trust or the respective amounts found due the several parties to the suit as consolidated. Both the findings as to said several amounts so found due should be sustained.

2. The purchasers from Wayne County, after the recording of the mortgage, took the lands purchased by them severally subject to the lien of the mortgage, and the proceedings to foreclose the trust deed and mortgage did not release or discharge this lien, so long as the mortgage debt remained unsatisfied.

3. The purchasers from the County, both after the recording of the mortgage, and after the service of process on Wayne County on March 11, 1865, cannot acquire tax titles as against the mortgagees or those acquiring title under the foreclosure sale.

4. That the Master's deed under the decretal sale of Sept. 18, 1877, transferred to the several purchasers

thereat an equitable right to so much of the mortgage debt as was bid upon each tract severally.

5. That the *lis pendens* as to purchasers from the County attaches from the 11th of March, 1865, the date of the service of process on Wayne County; and that on the facts averred in the several bills and sustained by the proofs purchasers of lands at the decretal sale, which were sold by Wayne County between April 20th, 1859, and March 11, 1865, are entitled to file a bill in the nature of a supplemental bill against the parties holding title from the County, subject to the mortgage, to have the lien of the mortgage enforced by a decree of foreclosure.

6. It is then adjudged and decreed that each of the owners of the equity of redemption or residuary interest of the County of Wayne, of, in and to the several tracts of land purchased from the County between April 20, 1859, and March 11, 1865, who had been already summoned or had appeared herein, or their assigns respectively, *each acting for himself or herself, and not for any other, may and shall redeem the respective tracts of land, of which they at date of service on them respectively of process or entry of appearance respectively held and owned the equity of redemption or residuary interest of the County of Wayne, within or at the expiration of one year from this date, by paying into Court the amount for which each of said tracts of land was bid and sold at said decretal sale, for the use and benefit of the owners respectively under title deraigned from said decretal sale of the tract or tracts so redeemed; and that the judgment creditors respectively of any such persons so owning the equity of redemption might or should redeem any tracts thereof in default of such parties so redeeming, at any time within three months of and after the said expiration of twelve months, by paying the amount so decreed to be*

redeemed from, in accordance with the statutes of the State of Illinois concerning redemptions from judicial sales; and also that the decree of foreclosure of June 25th, 1874, hereinbefore referred to, should be vacated and annulled as to each and every tract, (but as to none others), thus redeemed as aforesaid; and that in default of redemption, as provided for in the decree, that then, and from the date of the expiration of such period of limitation, all rights of such owners of the said equity of redemption, or their respective assigns so failing to redeem, should be forever barred and foreclosed of their equities of redemption, and of all rights of, in and to said lands of any kind or nature adversely to the owners under title deraigned from said decretal sale; and that each and all of said defendants so being barred and foreclosed, and their agents, &c. should from and after the expiration of said fifteen months cease to exercise any acts of ownership over said lands, and should at once thereafter vacate, abandon and leave the same, and never intermeddle any further therewith under pain of being considered in contempt of Court; and that the respective titles of said several tracts of land not so redeemed should be and they were confined in said several parties so owning the same by title deraigned from said decretal sale as aforesaid, and their assigns; and that any tax deed or certificate to any such tract of land not thus redeemed which may belong to any such person thus entitled but failing to redeem such tract, is hereby declared to be vacated, annulled and for nothing taken hereafter.

Costs are then declared to be adjudged against and distributed among the claimants under the equity of redemption or residuary interest of the County of Wayne who have been summoned in the case, or have entered voluntary appearance therein, in proportion to the respective amounts so required to be paid by them respectively to redeem hereunder, whether they redeem

or not, except that each party defendant shall be taxed costs of service on him or her; and that several executions issue therefor against defendants respectively; and that the cause be continued for the report of the Master in Chancery on all matters referred to him therein.

XXIV.

Thereupon, at the Jany Term, 1885, the respondents presented their petition for a rehearing of the said decree, pp. 727–731; the first cause assigned for the rehearing being "that the result of the decree in said cause would be a great hardship to the respondents, as there is not enough in amount in any case to allow an appeal."

Further alleged errors intervening in the decree are set forth at pp. 728-34.

In very tender consideration of the rights of defendants, and lest some error should have intervened in a decree which would not be subject to review upon appeal, the case was again carefully considered by Judges Treat and Blodgett, sitting together for that purpose, and on March 29, 1886, the motion for a rehearing was denied; p. 732–3.

Even after this full reconsideration, the motion for a rehearing was opened and continued until the next Term. It was then renewed before the same Judges, Mr. Justice Harlan, the Circuit Justice, sitting with them, because of the conceded non-appealability of the decree. It was by them again heard, and was, on June 10, 1886, denied on the merits, and the decree of March 29, 1886, affirmed; p. 734-5

XXV.

Thereupon, on July 13, 1886, some of the defendants

prayed an appeal from the final decree, to operate as a *supersedeas*, which seems to have been allowed on their entering into a bond to complainants in $5,000, conditioned, &c.

On August 5, 1886, defendants who had prayed the appeal, filed their petition for severance from the defendants refusing to join in the appeal and filed their appeal bond. Such petition appears at pp. 741–756.

The assignment of errors appears at pp. 766–7.

Second.

Upon these facts the following Points are presented:

First Point.

This Court has no jurisdiction of the present appeal, the matter in dispute not exceeding $5,000.

U. S. R. S. Sec. 692; Act of 16th Feby, 1875, Ch. 77, § 3: 18 Stat., 316.

And the appellees move to dismiss the appeal on this ground. They have given notice of such a motion, and submit herewith such notice with proof of service.

I.—No one of the appellants is interested to an amount exceeding $5,000, which amount is required to give this Court jurisdiction of the appeal.

II.—That the decree appealed from is not a joint decree, and imposes no joint debt, liability, or obligation, appears plainly from the Record.

It provides, p. 723, "that each of said owners of the

said equity of redemption, * * * each acting for himself or herself, and not for any other, may and shall redeem the respective tracts of land of which they * * * hold and own the equity of redemption, * * * by paying into this Court the amount for which each of said tracts of land was bid and sold at said decretal sale, for the use and benefit" of the respective complainants.

And an examination of the schedule in the decree, pp. 715–721, shows that no one of the appellants will be required, in order to redeem all the lands owned by him, to pay an amount equal to or exceeding $5,000.

Under this decree, therefore, any one defendant can relieve himself from further liability by paying the amount for which the land claimed by him was sold; such amount being in every instance far less than $5,000. If every other defendant fails to comply with the terms of the decree, such failure cannot affect him. His liability cannot be either increased or diminished by the redemption, or the failure to redeem, of his co-defendants, one or all.

Suppose there were only one defendant, and the amount to be paid by him on redemption was only $1,000, and he attempted to appeal; or suppose that all the other defendants in the present case made redemption, leaving only one refusing to redeem, and the amount due from him being only $1,000: Would this Court listen to an argument in support of either of those appeals?

III.—Several defendants against whom decrees of that character have been rendered cannot consolidate the amounts awarded against them, and by a joint appeal give this Court jurisdiction.

After the discussion which this point has received in this Court, it is neither necessary nor proper to argue this question at length, or cite in full the authorities.

We submit that under the rules laid down by this

Court in Gibson *vs.* Shufeldt, 122 U. S. 27, and the authorities there cited, the appeal must be dismissed.

The adjudicated liability of each of these appellants to the appellees is several.

It is now the settled law of this Court that, where the value involved in the claim of any party appealing is less than the jurisdictional amount, whether such appellant be a plaintiff seeking reversal of the rejection of his claim, or a defendant seeking escape from a verdict or judgment against him, the right of appeal of such party is several and distinct: and where he could not appeal if he were the sole appellant, he cannot gain the right to appeal by consolidating his claim wiht the claims of others, whether the same are or are not of the jurisdictional amount; although any one appellant whose several demand or interest exceeds the jurisdictional amount may appeal.

The present case is on all fours with the following cases.

Oliver *vs.* Alexander; 6 Pet. 143.
Rich *vs.* Lambert; 12 How. 541.
Ex parte Balt. & O. R. R. Co.; 106 U. S, 5.
Farmers' Loan and Trust Co. *vs.* Waterman, id. 265.
Hassall *vs.* Willcox; 115 U. S. 598.
Stratton *vs.* Jarvis; 8 Pet. 4.
Spear *vs.* Place; 11 How. 522.
Seaver *vs.* Bigelow; 5 Wall. 208.
Terry *vs.* Hatch; 93 U. S. 44.
Russell *vs.* Stansell, 105 id. 303.
Chatfield *vs.* Boyle; 105 id. 231.
Paving Co. *vs.* Mulford; 100 id. 149.
Schwed *vs.* Smith; 106 id. 188.
Hawley *vs.* Fairbanks; 108 id. 543.
4th National Bank *vs.* Stout; 113 id. 684.
Ex parte Phœnix Ins. Co.; 117 id. 367.
Tupper *vs.* Wise and Lynch *vs.* Bailey, 110 id. 398: 400: Compared with Friend *vs.* Wise, 111 U. S. 797.

Henderson *vs.* Wadsworth, 115 id. 64.
Stewart *vs.* Dunham, 115 id. 61.
Estes *vs.* Gunter, 121 id. 183.

The same rule was followed in the Supreme Court of Illinois, in an analogous case under a similar statute. Farwell *vs.* Becker, in June, 1889; 21 N. E. Rep. 792.

Point Second.

If the motion to dismiss the present appeal shall be denied, and the Court shall proceed to an examination of the appeal upon the merits, we submit that substantially every alleged error pointed out in the Assignment of Errors, pp. 766-7, has been already decided by this Court against the appellants, in 16 Wall. 452, and 94 U. S. 498. It is neither necessary nor becoming to re-argue the same. Attention will, therefore, be given, although very briefly, only to such matters pointed out in the Assignment of Errors as are not clearly covered by those previous decisions of this Court.

And if attempt is seriously made to sustain either of the Errors assigned, the appellees will claim the right to submit further argument in reference thereto, by reason of the conduct of the appellants in withholding the printed Record in this case, so as to give appellees less than ten days for the examination of such Record, and the preparation of their Brief and Points therein.

Point Third.

The Circuit Court clearly had jurisdiction of the several bills of the appellees. Such bills were simply supplemental bills to carry into complete effect the previous decrees of the Court affirming the rights of the holders of the bonds secured by the original mortgage and trust deed.

All the bills which by the order of Jan. 2d, 1884, p. 113, were consolidated, were in form purely supplemental bills to carry into full effect the decree in the original foreclosure suit. The bill of Taylor, Alexander and others against Bozarth and others, pp. 90–106, expressly prayed at p. 103, that it be taken as supplemental to the original bill in the Kennicott case. And by the consolidation that part of this bill became a part of all the other bills.

The Court below properly held, p. 722–3, "that, upon the facts averred in the several bills and sustained by the proof," the several complainants in the supplemental bills as "the purchasers of lands at the decretal sale which were sold by Wayne County between April 20th, 1859, and March 11th, 1865, *are entitled to file a bill in the nature of supplemental bill* against the parties holding title from the County subject to the mortgage to have the lien of the mortgage enforced by a decree of foreclosure."

It needs no argument to establish that every Court has jurisdiction and power by supplemental proceedings, whether in the form or under the name of a supplemental bill, or of a petition or other proceeding at the foot of its former judgment or decree, to carry the same into full effect, and to afford to all the parties entitled thereunder the relief which the Court has already adjudged to them.

Point Fourth.

It was a proper part of the decree sought to be appealed from to hold that, after the recording of the mortgage and the service of process on the mortgagor in the foreclosure suit, the purchasers from the mortgagor could not acquire tax titles as against the mortgagees or those acquiring title under the sale at the foreclosure of that mortgage.

To hold otherwise would be to enable mortgagors, or those claiming under them, to avoid the title of their mortgagees by their mere omission to pay the taxes imposed upon the mortgaged property.

Especially would such a holding be monstrous, and in violation of all equity, when, as was the fact in the case at bar, the mortgagor was the party imposing the taxes, and having the motive, the inducement and power to make those taxes as burdensome as possible, for the purpose of inflicting that precise wrong upon the mortgagees and their grantees.

Point Fifth.

The decree appealed from properly holds, p. 722, that the Master's deed under the decretal sale transferred to the several purchasers thereat an equitable right to so much of the mortgaged property as was bid for each tract separately.

No argument is required to show that, when a party at a sale of mortgaged premises under the decree of a court of equity purchases a part thereof at a specified sum, paying over that sum through the Court to the mortgagee, and receiving the conveyance from the Court

through its officer, if the title acquired for any reason proves incomplete or defective, or requires further action of the court to assure to the purchaser what he believed he was purchasing and what the court undertook to sell: the purchaser acquires by subrogation a several and distinct equitable right to so much of the mortgage debt as he has satisfied by the payment of his purchase price, and also an equitable interest in the land conveyed to him. The Court, if the defect in the title be one in regard to the manner of proceeding, has the power and is under the duty to perfect, upon a hearing of the parties the subrogated right so acquired; and that hearing may be had by a supplemental bill, or other proceeding of that character upon the foot of or based upon the original decree. And wherever there was jurisdiction to render the original judgment, there is jurisdiction in the same Court by proper proceedings to make effectual the original adjudication.

Point Sixth.

There was no violation in the Court below of Sec. 723, R. S. U. S., The rights presented were purely equitable and of equitable cognizance. The appellees had no remedy at law whatever.

Point Seventh.

There was no fraudulent transfer of title, nor was the jurisdiction of the Circuit Court to render the decree in

question acquired thereby, or by any wrongful act, transfer or proceeding whatever.

The reference in appellant's brief to p. 419 is merely to a motion made before decree, verified on information and belief by one of the Attorneys. No evidence whatever to that effect was submitted to the Court as the foundation for its decree.

Nor is there the least proof that any suit had been brought in the State Court of Illinois by either of the appellants, or against either of the appellees, or in regard to any of the lands covered by the decree below.

If the decree below covers, or is claimed to cover, any land as to which there was a disclaimer in that Court, the fact must have been owing to a simple oversight. It ought to have been corrected in the Court below. It might have been corrected there on one of the motions for rehearing. But it was to be corrected on the application of the parties making the disclaimers, and not upon an appeal from the decree: especially when that appeal is taken by other parties than those who made the disclaimers.

Point Eighth.

The 13th Assignment of Error is frivolous, or worse than that.

The Record shows, Placita, p. 1, that Judge Blodgett was "designated and appointed by the Circuit Judge to aid in holding a Circuit Court in said Southern District of Illinois by virtue of Section" 596 of the R. S. U. S. "for the purpose of hearing the cause hereinafter named."

That statute expressly makes it the duty of the Cir-

cuit Judge, "if in his judgment the public interest so requires, to designate and appoint * * * the district judge of any judicial district within his circuit to hold a district or circuit court in the place or in aid of any other district judge within the same circuit."

The designation averred at p. 1 to have been made is conclusive evidence that in the judgment of the Circuit Judge the public interest required Judge Blodgett to sit in this Circuit Court, and take part in the hearing and decision of the present case.

Of course, the exercise of that discretion is not here open to review: no machinery whatever being provided by the law for that purpose.

Point Ninth.

The present appeal should be dismissed with costs, upon the motion made for that purpose. If the Court proceed to an examination of the merits, the decree should be affirmed upon the merits, with costs.

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